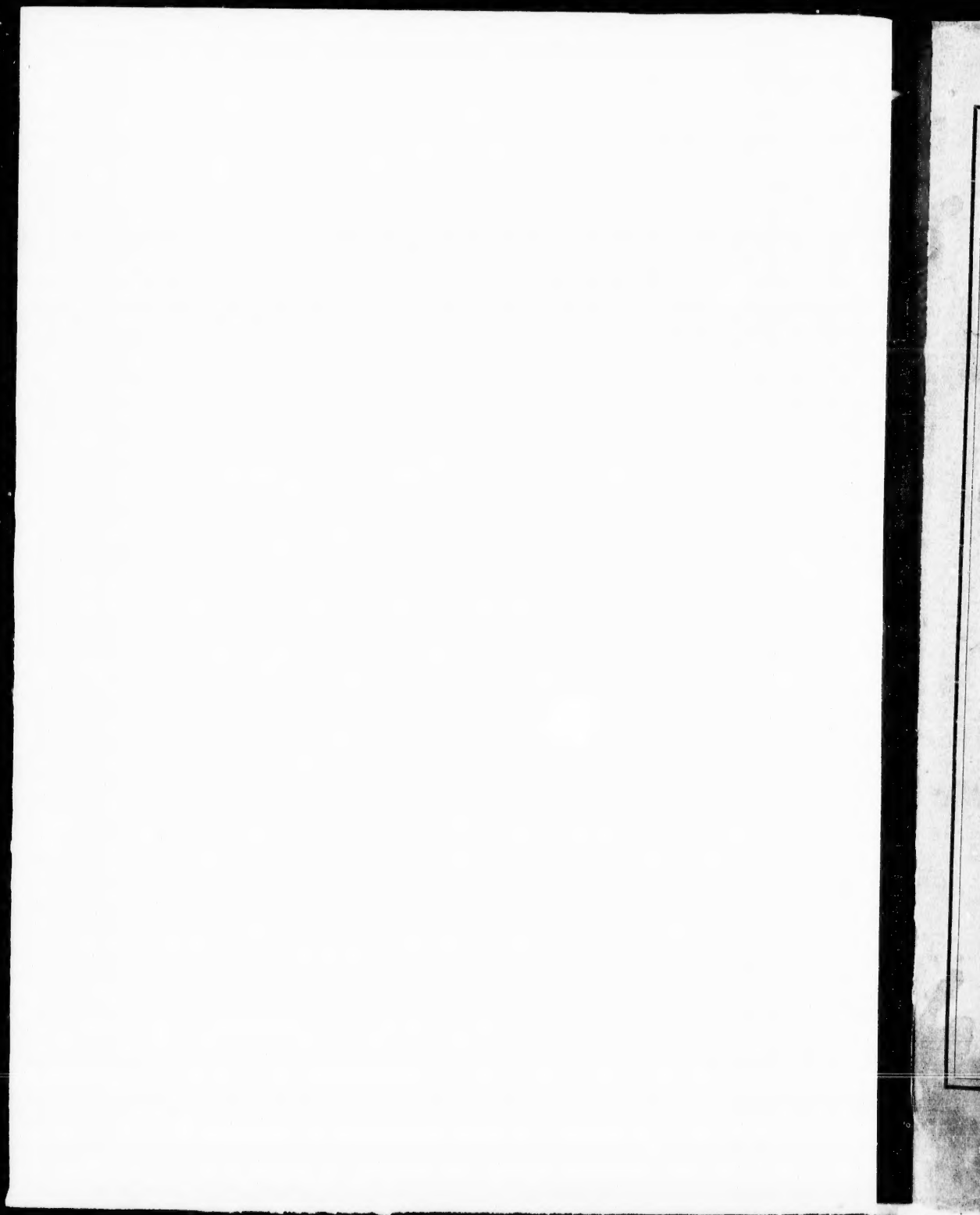




IN THE
SUPREME COURT OF CANADA.

APPEAL FROM THE COURT OF QUEEN'S
BENCH FOR MANITOBA.

BETWEEN

WILLIAM GOMEZ FONSECA AND JOHN CHRISTIAN SCHULTZ,
Defendants (Appellants).

AND

HER MAJESTY'S ATTORNEY-GENERAL FOR CANADA,
AT AND BY THE RELATION OF ELIZA MERCER,
Informant (Respondent).

THE CASE.

MACDONALD, TUPPER & PHIPPEN,
SOLICITORS FOR APPELLANTS.

PATTERSON & BAKER,
SOLICITORS FOR RESPONDENT.

WINNIPEG:
MANITOBA FREE PRESS AND CALL PRINT.
1888.

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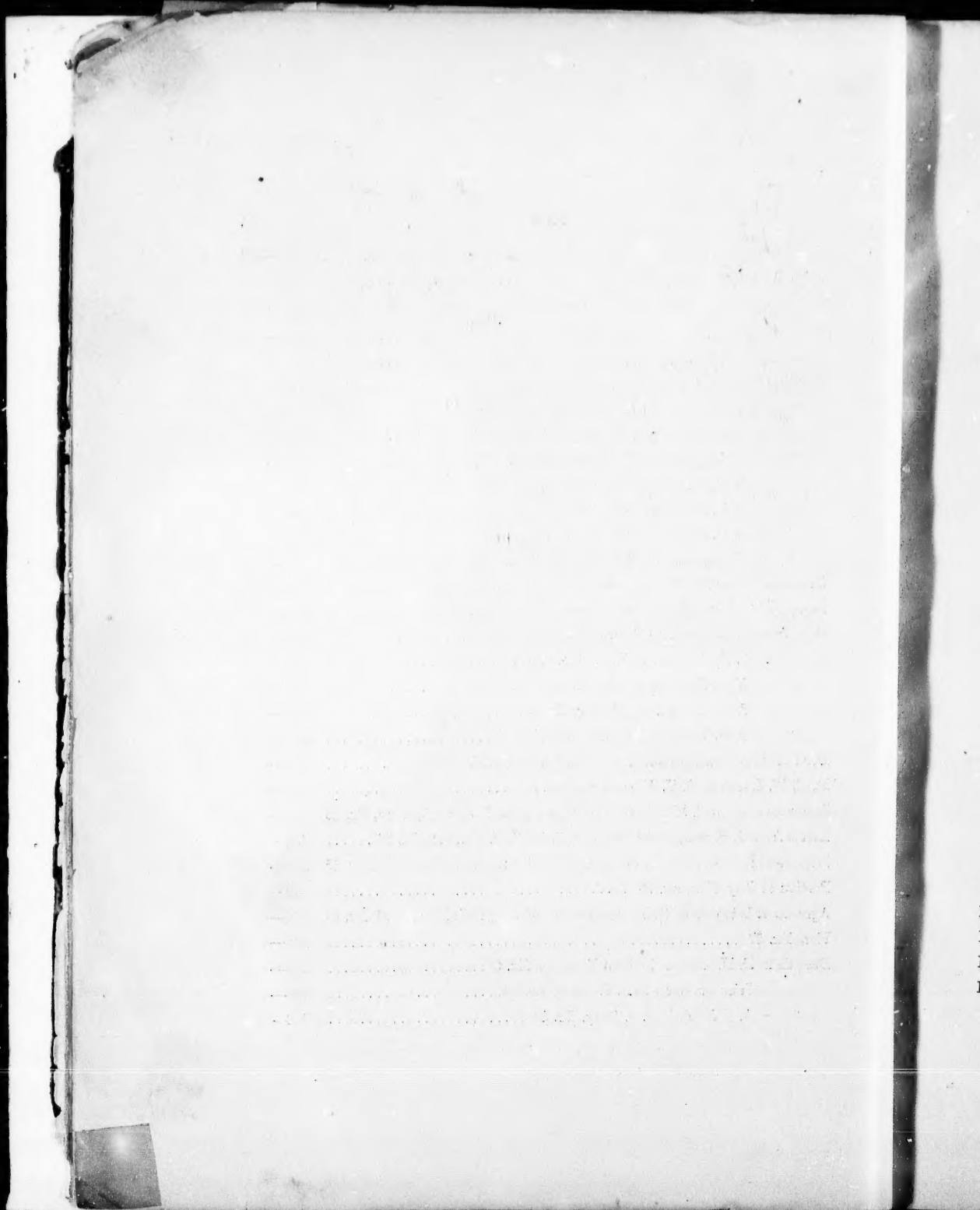
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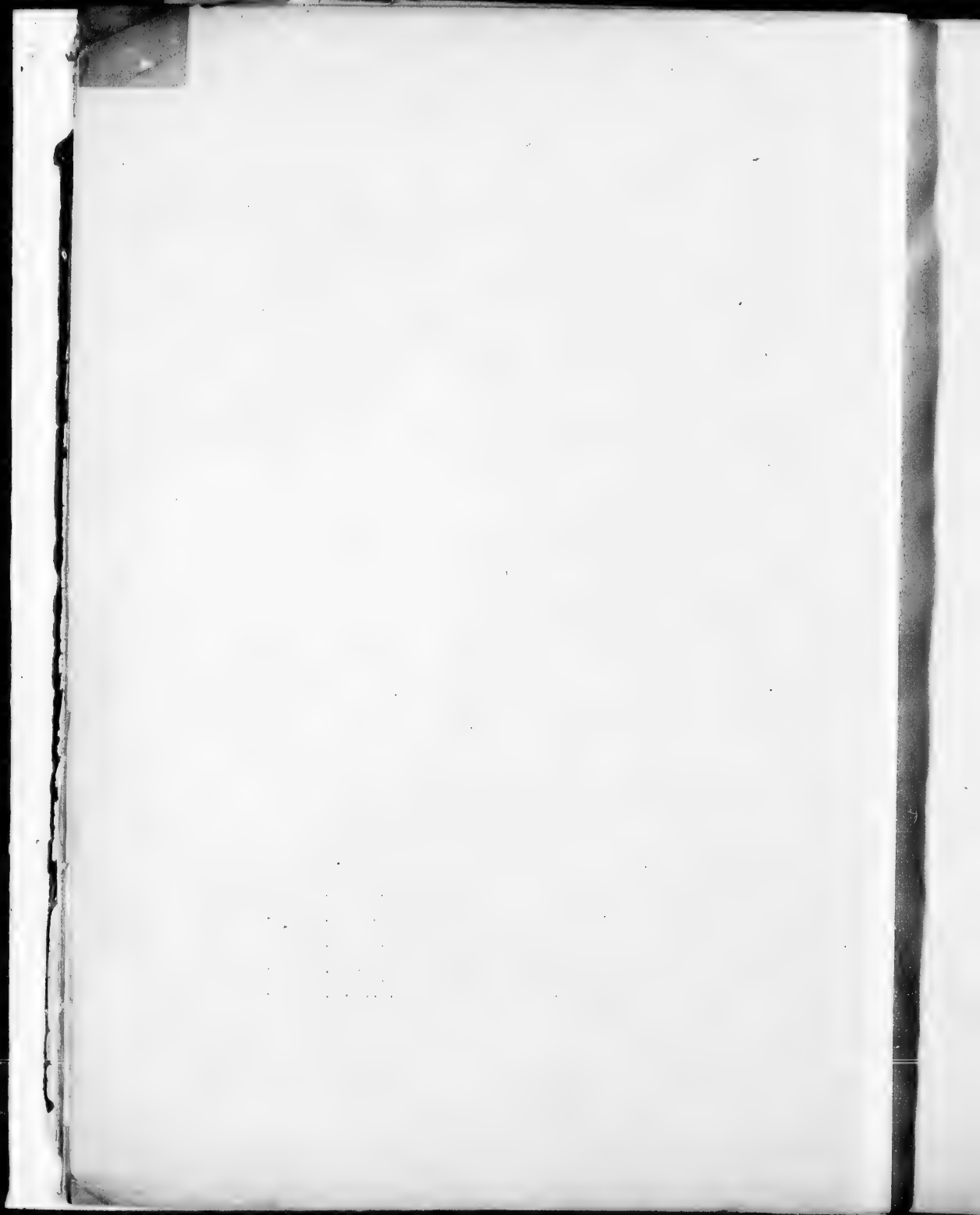
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INFORMATION.

IN THE QUEEN'S BENCH.

IN EQUITY. }

TUESDAY, the fifteenth day of September, A.D., 1885.

BETWEEN

HER MAJESTY'S ATTORNEY-GENERAL FOR CANADA
(AT AND BY THE RELATION OF ELIZA MERCER.)

Informant.

AND

WILLIAM GOMEZ FONSECA AND JOHN CHRISTIAN SCHULTZ,

Defendants. 10

CITY OF WINNIPEG. }
To Wit: }

The Information of Her Majesty's Attorney-General for Canada.

To the Honorable the Judges of the Court of Queen's Bench in Equity, informing sheweth unto your Lordships the Honorable Sir Alexander Campbell, Her Majesty's Attorney-General for Canada, on behalf of Her Majesty, at and by the relation of Eliza Mercer, the wife of Frederick C. Mercer, of the City of Winnipeg, in the County of Selkirk, Gentleman, as follows:—

1. Prior to the transfer of the Territory, now constituting the Province of Manitoba, to the Dominion of Canada, the defendant William Gomez Fonseca 20 was in possession of a small portion of land containing about two acres, now forming part of the eastern end of what is now known as lot thirty-five (35) of the Dominion Government Survey of the Parish of St. John.

2. The said two acres abutted upon a large tract of land then known as the Point Douglas Common, which had never been sub-divided by the Hudson's Bay Company, and with the exception of certain portions then in the occupation of certain persons claiming title thereto, was used by those persons who had settled near the said Common and upon the land known as Point Douglas as a Common for their cattle to graze upon, and such persons were known as the Point Douglas holders.

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3. After the said transfer the said Point Douglas holders associated themselves together for the purpose of asserting title in themselves in fee simple in the said Common; caused a portion of the same to be surveyed into town lots, sold many of such lots, recognized the titles of those persons in possession as aforesaid, and having constituted the defendants Fonseca and Schultz and others trustees for all, applied to the Crown for a grant of letters patent for all the said Common, in favor of the said trustees.

4. The Crown refused to recognize the validity of such claims and offered to grant to each of the said Point Douglas holders portions of the said Common equal in size to the land then held by each upon the said Point.

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5. After long delay and negotiation and no agreement having been arrived at, the defendant Fonseca conceived the idea of claiming for himself and against all the others of the Point Douglas holders, a large tract of the said Common, namely, the southerly ten (10) chains of said lot thirty-five (35), Dominion Government survey, with a depth of two miles, basing his claim upon the fact of his occupancy of a portion of the eastern end of said lot thirty-five (35), and the customary shape of farm lots.

6. In pursuance of the said idea, the defendant Fonseca, in the month of July, 1877, presented his petition to the Honorable the Minister of the Interior, alleging that prior to and on the Fifteenth day of July, 1870, he was by himself 20 and through his servants, tenants and agents, in actual peaceable possession of the said southerly ten (10) chains of said lot number thirty-five (35), commencing in rear of the land or lot number eleven (11), owned by the late Neil McDonald, thence running back the usual distance to the two mile limit, and praying in consequence of such possession that Letters Patent for the whole of such land might be issued to him.

7. The said the Department of the Interior during the pendency of the said petition of the defendant Fonseca required him to file a statement showing what persons were entitled by possession or otherwise to any portions of the lands for which he was seeking to procure a Patent, and in response thereto the 30 defendant Fonseca filed with the said department a memo of such persons among the rest mentioning that one William Logan was the owner of lots C D and E in block fourteen (14) on the east side of Main street, in Sinclair's survey of part of said lot number thirty-five (35) and that Kew, Stobart & Co. were the owners of lot F in said block number fourteen (14) and stating that he, the defendant, Fonseca, did not wish to interfere with the claims of any such persons, which memo bears date the 3rd day of October, 1878.

8. One Alexander J. Belch, in the month of July, A.D., 1879, made an application for a patent for portions of said lots C and F, basing his claim upon the title of said Logan, and in support thereof the defendant Fonseca made a 40

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solemn declaration that the said William Logan had been in occupation of said lots C and F since the year 1870 and that the said lots had since been occupied by him, and those claiming under him also, stating that the trustees of the Point Douglas Common, of whom he was one, did not claim any rights in or to the said land but acknowledged the title of those claiming through the said Logan.

9. Some time thereafter the matter of the said petition of said defendant, Fonseca, was referred by the Department of the Interior to the Surveyor-General for his investigation and report, and that official made his report in writing bearing date the 3rd day of February, 1879.

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10. In the said report it is pointed out that as the said Common had never been surveyed by the Hudson's Bay Company or the Dominion Government, the possession of the defendant Fonseca could not be affirmed to include any greater extent than his own actual enclosures and did not therefore carry with it the occupation of any definite one of a system of lots; that the defendant Fonseca had originally made a claim antagonistic to the claim now made as one of the associated Point Douglas holders as aforesaid, and that if any grant were made to him of land, other than that within his own enclosure, it would be by reason of the Grace of the Crown and not because he had any right thereto, and it was by the said report suggested that if land were granted to the defendant Fonseca, which with that enclosed by him, would make in all twenty-five acres, he would be liberally dealt with and such facts as stated in said report are true.

11. The said report was recommended by the Deputy-Minister of the Interior to the favorable consideration of the Honorable the Minister of the Interior and was by him approved and adopted, and the Crown thereby determined to act thereon and to make a grant from the Crown in accordance therewith.

12. After much delay having occurred, and the selection of such additional lands being of much consequence, the defendant Fonseca applied to the defendant Schultz, who was a member of the Dominion House of Commons, for the assistance of his influence, and by memo in writing bearing date the 12th day of November, 1879, it was agreed between the defendants Fonseca and Schultz that in case a patent of any portion of the said Common was granted under the said application and petition to the defendant Fonseca, he (the defendant Fonseca) would convey one-half thereof to the defendant Schultz.

13. Shortly thereafter, and on the 5th day of December, 1879, a patent issued to the defendant Fonseca for a large number of lots, and amongst others the said lots C, D, E and F.

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14. In or about the year of our Lord 1870, one William Logan, who was one of the said Point Douglas holders in respect of his ownership of the lot of land on Red River known as the Hupé lot and afterwards as lot number twenty-four (24) of the Dominion Government Survey of the Parish of St. John, as one of the persons interested in the said Point Douglas Common, took possession of a portion of said southerly ten chains of said lot thirty-five (35), which portion may be more familiarly known and described as follows, that is to say:—

“Lots C, D, E and F, in block number fourteen (14), according to the official plan of the City of Winnipeg, made by George McPhillips, D.L.S., and filed in the Registry office in and for the County of Selkirk.” 10

15. Afterwards the said Logan conveyed to various persons various portions of the said lots C, D, E and F, and some of these persons conveyed to others, and there are now various persons in possession of the said lots, claiming to be entitled thereto and to receive patents therefor by virtue of long possession and improvements placed upon the property.

16. Among such persons the relator claims to be entitled to —First, a portion of said lot D, having a frontage of about ninety-two feet on Main Street and running back along Fonseca Street with the uniform width of ninety-two feet to a depth of one hundred and sixty-five feet. Second, a portion of said lot E, having a frontage of ninety-two feet on Austin Street and running back along E, Fonseca Street the same width to a depth of one hundred and thirty feet, more or less; and the said Thomas Simon Gray claims to be entitled to parts of the lots C and F in the plan hereinafter mentioned, and more particularly described as follows:—Commencing at the north-west angle of the lot lettered B, in the survey of the said Point Douglas Common made by Duncan Sinclair D.L.S., on the east side of Main Street, in the City of Winnipeg, which said survey is shown by a map or plan thereof duly registered in the Registry Office for the County of Selkirk; thence northerly along the said Main Street forty feet, thence in a line parallel with the northern boundary lines of said lot lettered B and lot lettered G in same survey in an easterly direction to Austin Street; 30 thence southerly along the front of lot lettered F, where the same fronts on said Austin Street forty feet, more or less, to the south-easterly corner of said lot lettered F; thence along the southerly boundary lines of lots lettered F and C, in said survey, to the place of beginning on Main Street.

17. The relator and the said Thomas Simon Gray each claim title to their respective portions of the said lands through the said William Logan, and they and those through whom they claim, were for many years prior to the issue of the said patent continually in possession of the said portions of the said lands claiming to be entitled thereto by reason of such possession and the absence of title in any person or persons other than the crown. 40

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18. The relator is still in possession of a portion of said lands and the said T. S. Gray is still in possession of the portion of the said lands claimed by him as aforesaid, but the defendants threaten and intend to eject the relator and the said Gray therefrom.

19. It was not the intention of the department to grant to the defendant Fonseca any lots claimed by or in the possession of other persons as aforesaid, and it was through error and inadvertence that said lots C D E and F were included in the said patent.

20. The relator had not, nor had any person through whom she claims, nor had the said Gray or any person through whom he claims, any notice or knowledge of any application of the defendant Fonseca for a patent for said lots C D E and F, or of any intention on the part of the Crown to grant such a patent and had no opportunity of presenting evidence of her or his claim, if any evidence were necessary after the admissions aforesaid of the defendant Fonseca, and the said patent was granted without any notice to or knowledge of the relator, or the said Gray or those through whom she or he claims as aforesaid and through improvidence and error as aforesaid.

21. According to the long established practice of the Department of the Interior of Canada with respect to the disposition of the ungranted lands of the Crown in the said Province of Manitoba under the circumstances above set forth, although the said William Logan's possession of the said lands did not commence prior to the 15th day of July, A.D. 1870, but commenced shortly thereafter, the Crown would not have knowingly granted said lots C, D, E and F to the said defendant Fonseca but would have given an opportunity to the relator and the said Gray, and others claiming through said Logan to show the nature of their claims to said land and the length of their possession and the amount and value of their improvements, and would have either given patents to said claimants free or at prices to be fixed by the Department having regard to the value of the lands at the time said Logan first went into possession, and the Crown would not have granted said lands to said Fonseca without giving to said relator and others an opportunity of making such purchase, but would have given said Fonseca other lands in lieu thereof.

22. Shortly thereafter the defendant Fonseca pointed out to the said Department of the Interior that a number of the lots embraced in the said patent were the property of persons, other than himself and that he had no right thereto and he offered to convey such lots to such persons and required that a similar number of lots should be granted to him by the Crown, which request was granted and a further patent issued to the defendant Fonseca for such further lots.

23. The defendant Fonseca did not include said lots C D E and F in his said representation so sent to the Department and he and the defendant Schultz now claim to be entitled thereto by virtue of the said patent and agreement

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24. The defendants have recently taken forcible possession of a large portion of the lands and premises claimed by the relator herein and claim title to the same under and by virtue of letters patent obtained by said Fonseca from the Dominion Government as aforesaid, and have notified tenants occupying the lands of the relator to pay no rents for the said lands and premises, the property of the relator, to her, but to pay such rents to them, and have received rents from said tenants of the relator and are still receiving and applying the same to their own use claiming that they are entitled to the same under the said letters patent so issued as aforesaid, and have also recently attempted to levy rents from the tenants of the relator by distress and sale of their goods and chattels.

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25. The Crown is willing and hereby offers to convey to the defendant Fonseca, or to him and the other defendants, or to whomsoever may be entitled to represent him therein, portions of the said common equal in extent to the said portions of said lots C, D, E and F, and in room and stead thereof.

Your informant therefore prays,

1. That it may be declared that the said patent was issued in respect of the said lands hereinbefore mentioned improvidently and through error, and in ignorance of the rights of the several persons aforesaid; that the said patent may be set aside so far as it affects the said lands by a decree of this Honorable Court, and be declared absolutely null and void and of no effect so far as regards the said lands
2. That the agreement of the 12th day of November, 1879, whereby the said defendant, William Gomez Fonseca, agreed to convey to the defendant John C. Schultz an undivided one-half share or interest in the lands in said Common, for which the said defendant, William Gomez Fonseca, should obtain Letters Patent from the Dominion Government and the deed of such undivided one-half share or interest in the said lands made in pursuance of said agreement, if any such deed exists, be declared null and void as to the said lands and premises.
3. That the said defendants may be restrained by the order and injunction of this Honorable Court from selling, disposing of, collecting the rents, or otherwise dealing or assuming to deal with the said lands and premises, and from interfering in any manner with the tenants of any of the said lands and premises.
4. That all the conveyances of the said lands and premises through which the said relator claims title to the said lands and premises may be confirmed

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6. That the defendants, or some or one of them, may be ordered to pay the costs of this suit.
6. That for the purposes aforesaid all proper directions may be given and accounts taken.
7. That your Informant may have such further and other relief as the nature of the case may require, and to this Honorable Court may seem meet.

And your Informant will ever pray

(Signed)

A. CAMPBELL,

ATTORNEY-GENERAL FOR CANADA. 10

CONSENT OF ELIZA MERCER TO HER NAME BEING USED IN INFORMATION.

I hereby consent that my name be used as relator in the information in this cause.

Witness : H. Ferguson.

ELIZA MERCER.

FIAT OF ATTORNEY-GENERAL FOR CANADA.

I hereby consent that my name be used as Informant in the Information in this case, upon the relator, Eliza Mercer, giving a bond to the satisfaction of the Registrar of said court in the penal sum of five hundred dollars, currency, 20 conditioned that she will pay to the defendants all costs, charges, damages and expenses that may be awarded to them in this case.

Dated at Ottawa, this 14th day of August, A.D. 1885.

A. CAMPBELL,
Attorney-General for Canada.

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ANSWER OF DEFENDANT, FONSECA.

The answer of the defendant, William Gomez Fonseca to the Information of Her Majesty's Attorney-General for Canada, at and by the relation of Eliza Mercer, of the City of Winnipeg.

In answer to the said information, I, the said William Gomez Fonseca, say as follows :—

1. I admit that on and for many years prior to the 15th day of July, 1870, I was in peaceable possession of portions of lot numbered 244, of the Hudson's Bay Company's survey.
2. The said lot number 244 was afterwards re-surveyed, and the eastern 10 part of said lot, known as the Neil McDonald estate, was divided into lots 12 and 13, and all the western portion, including nearly all the land occupied by me, was designated as lot number 35, of the said Dominion Government survey.
3. I deny that the portions so occupied and possessed by me are correctly designated in the first paragraph of the said Information.
4. In the years 1861 and 1862 I went into possession of a portion of the southern ten chains of said lot number 35, which said ten chains was bounded on the east by the land of said Neil McDonald, on the south by lot number 245, owned by the late Robert Logan, on the west by the lands of the said the Hudson's Bay Company, and on the north by the remainder of said lot number 20 35, which said ten chains includes within its range the lands in question in this cause.
5. I have remained continuously in uninterrupted occupancy and possession of the said ten chains, excepting as hereinafter stated, from the said year 1861 up to the present time, and I am at present residing with my family upon the same property.
6. About the year of our Lord 1862, and while in occupation and possession as aforesaid, I erected a dwelling-house and out-buildings on the eastern portion of the said ten chains, and from that time forward up to the present time, I have resided with my family in the said dwelling-house and premises, and 80 during the said time have occupied the said out-buildings with my horses and cattle.
7. In the years A.D. 1869 and '70, I erected a large frame store and out-buildings on the said ten chains, about 300 yards westward from my said dwelling-house and quite close to the lands in question in this cause, which

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said store and out-buildings have from that time forward been and are now owned and occupied by myself and tenants.

8. The whole of the said lot number 35 is composed of about 40 chains, extending from north to south, and prior to the transfer of the lands in Manitoba to the Dominion of Canada there were other persons occupying portions of the north part of lot 35, and one E. Barber also occupied a small lot within the range of the said ten chains.

9. In the year of our Lord 1867, being in possession as aforesaid, I with said other occupants of the said lot number 244, employed one Herbert L. Sabine, a duly authorized surveyor, to make a survey of the whole of said lot, 10 and when the work was finished I paid the said Sabine one-quarter of the expenses of the same, this being what was considered as my proportion or share of the expenses of the said survey or what the expense would be for the survey of the said ten chains

10. At the time of the said transfer, I was not only in possession of the said ten chains of the said lot as aforesaid, but I was also the owner of three other large Parish lots on Point Douglas, being composed of several of the system of Parish lots on Point Douglas, in the Parish of St. John, and there were several other parties owning similar Parish lots on said Point Douglas, and thereunder entitled to acre for acre under the Order-in-Council of the 10th 20 May, 1877, as well as being entitled to other portions of said lot 35 under The Manitoba Act, because of their occupancy on the 15th July, 1870

11. After the said transfer, I, with other owners of the said Parish lots, without in anyway relinquishing our claims to the said lot 244, by reason of the said occupancy and possession united together and put forward a claim to the whole of the said lot 244, in fee simple not in the nature of the ordinary claim of Parish lot holders to the outer two miles, but as owners because of an absolute gift to us or those through whom we claimed of the said lot 244 from Lord Selkirk, and then in the alternative if the Government would not recognize the claim through Lord Selkirk, that we should be entitled under the 30 Manitoba Act.

12. After a full investigation the Government refused our claim under the Lord Selkirk title, and further determined that the Manitoba Act did not apply to a joint application such as the Point holders had made, but that out of the said lot 244, then known as lot 35, the holders of one or more of the said system of Parish lots, or parts thereof, would be entitled to an outer two miles allowance or acre for acre to correspond with the area of their respective Parish lots or parts of Parish lots.

13. The Dominion Government in making the said allowance of acre for acre as in the last paragraph mentioned, declared that the land of the said Neil 40

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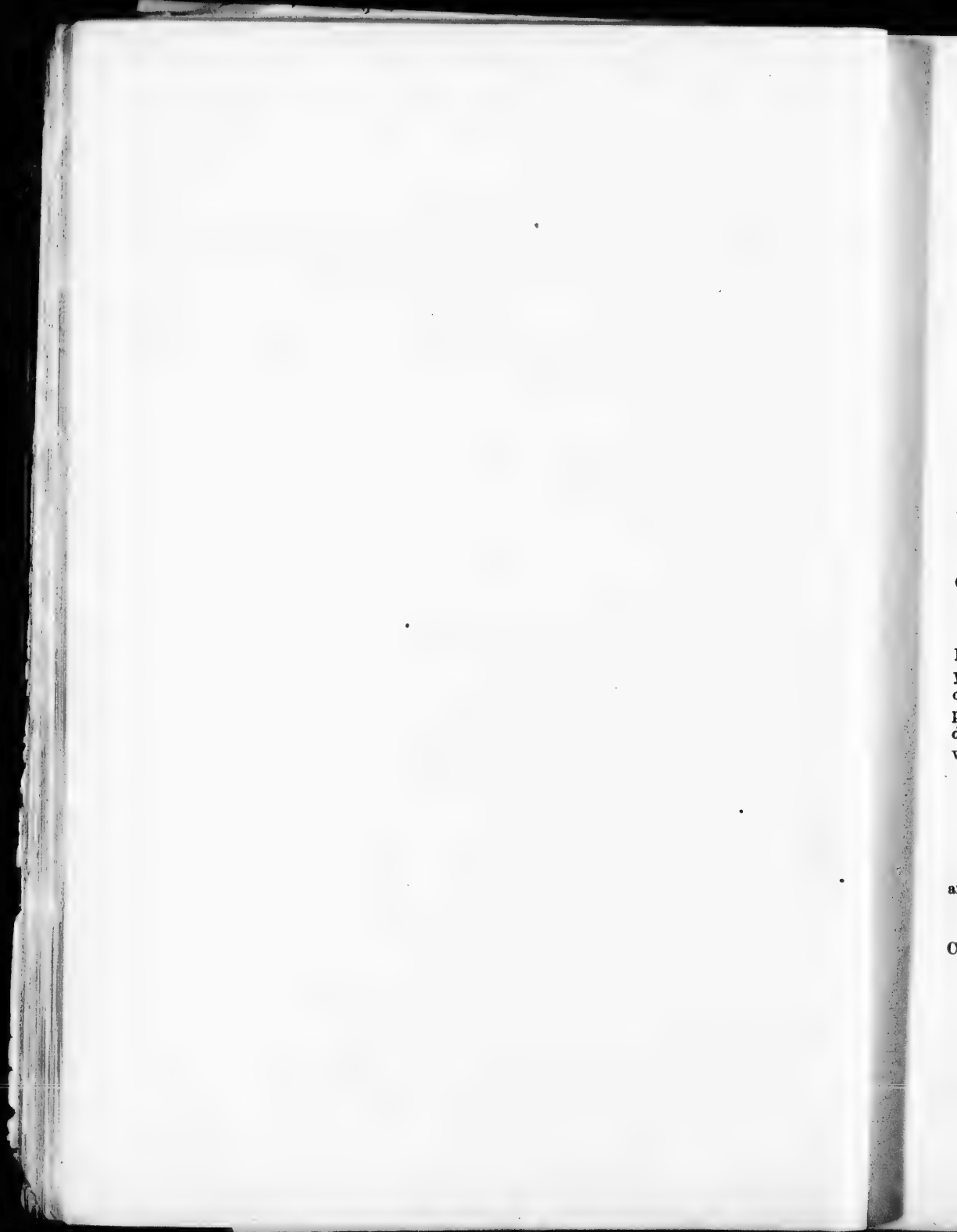
McDonald, situated easterly from the said ten chains should constitute one Parish lot in respect to his being allowed acre for acre but that such allowance to him should not include any land for which a right to a patent might be established under the Manitoba Act.

14. After the said determination of the Government as stated in said Order-in-Council from time to time, all persons in peaceable possession and occupancy of portions of said lot 35 on and prior to the fifteenth day of July, 1870, being the time of the said transfer made applications to the Government to have their titles confirmed by patent under the Manitoba Act, all of which claims were carefully considered by the Dominion Government, including the claims of 10 John McTavish, present Land Commissioner of the Canadian Pacific Railway, The Honorable John Sutherland, Honorable John C. Schultz and Mr. E. L. Barber, who were owners of Parish lots or portions of Parish lots and entitled to acre for acre out of said lot 35, under the said determination of the Government, and who as well established their claims by possession and obtained patents from the Government for portions of said lot 35 under the Manitoba Act.

15. About this time, namely, in the month of July, 1877, I also made application under the Manitoba Act for a ratification of my title to the said ten chains, this being the matter referred to in the fifth and sixth paragraphs of the 20 plaintiff's bill of complaint, but I deny positively and I charge it as wholly false that I ever conceived the idea of claiming for myself any portion of said lot 35 as against the other Point holders, as alleged in the said fifth paragraph of this information and I say that in making my said application and in subsequent intercourse with the Government on the subject I withheld nothing, but on the contrary gave the fullest and most complete information in my power to the Government on every subject which could assist it in rightly determining the owners of any and all portions of the said Common.

16. The said respective claims first by what were known as the Point holders to the whole Common or lot 244 and afterwards by the parties in possession on and prior to the 15th July, 1870, under the Manitoba Act, were separate and distinct claims and in no way depended upon each other although made by or on behalf of the same parties, and in dealing with the said respective claims the Government never allowed the one to conflict with the other but treated each upon its respective merits.

17. After making my application for the said ten chains in the month of July, 1877, as aforesaid, to wit, about the month of September, 1878, Col. J. S. Dennis, the then Surveyor-General of the Dominion of Canada, was in the City of Winnipeg, and personally made an inspection of the location, surroundings and buildings, of and upon the said ten chains and I took him specially to the 40 said lots C D E and F and pointed them out to him as being partly claimed by William Logan and some others to whom he had sold portions of them, and 1



then explained to him that if William Logan or the said parties could make out their titles to the property I had no wish to disturb them.

18. At the time named in the last preceeding paragraph I especially stated to Col. Dennis that William Logan was a brother-in-law of mine (as the fact was) and that in his case, more than any other, I was especially desirous, for family reasons, not to interfere with any property he then occupied or claimed or that might be claimed under him; whereupon Col. Dennis replied that he was familiar with the whole circumstances and that he, of his own knowledge, knew that said Logan or any person claiming under him was not in possession on the 15th of July, 1870, and that he further knew that at the time in question 10 the land was vacant and unoccupied, but that he was then about to return to Ottawa and that it would be as well for me to send forward to the Department what my ideas were on the subject of ownership, and pursuant to this suggestion I did in about two weeks thereafter, to wit, on the 3rd day of October, 1878, send him a letter and statement in the following words and figures:

COL. J. S. DENNIS,
Surveyor-General.

Winnipeg, 3rd October, 1878.

I have the honor to address you on the matter of my claim on the Point Douglas Common of 160 acres of land under the Manitoba Act, as suggested by 20 yourself to me during your recent visit to Winnipeg when you had the best opportunity of seeing for yourself how matters stood; I send the names of such persons, as to the best of my knowledge, are the owners at present. I have no disposition to deprive any one of their lots. You will perceive that the most valuable portions of the claim has been disposed of.

Trusting that the patent will issue at the earliest possible day,

I remain,

Your Obedient Servant,
(Signed) W. G. FONSECA.

The said letter being accompanied by a statement in the following words 30 and figures:

Winnipeg, 3rd October, 1878.

List of lots disposed of out of W. G. Fonseca's claim on the Point Douglas Common:

Kew, Stobart & Co., B and G in block 14, Sinclair survey of Main street.	
" " F in block 14	" " "
William Logan, C, D, and E, in block 14	" " "
John Sutherland, A and H, in block 14	" " "
" Nos. 1 and 2, in block 12	" " "
" Nos. 3 and 4, Sinclair survey east of Austin street.	
" Part of 57,	" " " "
D. A. Smith, No. 2, in block 1, Sinclair survey of Main street.	

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Dr. J. C. Schultz, Nos. 1 ~~and 3, block 1~~, and part of 4, block 1, Sinclair survey of Main street.

Colin Strang, W $\frac{1}{2}$ 8, in block 12, Sinclair survey of Main street.

Andrew Strang, E $\frac{1}{2}$ No. 8, in block 12, " " "

D. U. Campbell, No. 5, in block 12, " " "

Frank Clark, Nos. C and F, in block 13, " " "

Manitoba College, A, in block 13, " " "

Lieut.-Col. Kennedy, No. 8, block 1, " " "

Sheriff C. Inkster, E $\frac{1}{2}$ 4, in block 12, " " "

Trustees of Public Schools, Nos. 3, 4 and 5, block B, east of McTavish street. 10

John Bostiel, No. 8, in block E, " "

Thomas Spence, No. 2, block E, " "

" " Nos. 2 and 4, block F, " "

John Bruce, No. 48, east of Austin street.

Bishop of R Land, No. A, east of McTavish street.

McKenzie, No. 4, block E " " "

Heirs of Neil McDonald, Nos. 55, 54, 53, 52, east of Austin street.

" " " a small portion of 47, east of Austin street.

C. W. Radiger, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, block V, east of McTavish street.

E. Doidge, 1 lot composed as follows: Beginning at a point where Margaret 20 (formerly Rupert) street intersects Fonseca street, one chain distant along the north side of Fonseca street and two chains along the eastern side of Margaret street, thence along the division line between lots two and three, Block B, to a point which will have two chains from the said point along the said division line to the west side of McTavish street; from thence southerly to the point on Fonseca street one chain distant from point of beginning.

George Foulds, the remaining portion of lot No. 1, block B.

— McGill, the remaining portion of Lot No. 2, block B.

This letter is what is referred to in the seventh paragraph of the informa- 30
tion herein, but as stated in the second paragraph of the letter, it was not the
result of any demand made for the purpose, but only in reply to a suggestion of
Col. Dennis, nor do I in the letter claim to know who are the owners, but only
speak from my belief of who were the owners at the time.

19. The letter and statement in the last paragraph mentioned were intend-
ed as an expression of opinion, taken down at the time to assist the Department
on the subject of ownership, and to assist the Department in finding out what
Government lands were available in Winnipeg to meet their requirements, and
on this latter point Colonel Dennis, as he expressed it, was specially anxious to
get information, but I had no records before me then as to dates or accurate 40
information to assist me in preparing the statement and without attaching
much importance to it, as the matter had been before the Depaartment for
years, I followed out the suggestion of Colonel Dennis and prepared the letter

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and statement from observation and memory at the time, but, as it afterwards turned out, the statement was not correct in several particulars. The names of Kew, Stobart & Co. are put down by me in said statement for lot F, in said block 14; Thomas Spence for lots 2 and 4, in block F; William Logan for lots C, D and E, in said block 14; John Bostiel for lot 3, E; and Thomas Spence for lot 2, E; whereas in fact upon closer investigation, the Government rejected all these claims, and the respective claims of the parties above named were never recognized by the Government, nor have they ever received patents for the said lots, and most of the said lots have been patented to other parties, while in the patent afterwards granted to me were included the said lots C, D, E and F 10 the three first named being at the time partly in possession of said Logan, and the last named, being lot F, stated by me as being in the possession of Kew, Stobart & Co., whereas now it is charged in the present Information that the whole of lots C, D, E and F, were of right the property of the said Logan or those claiming under him, because of the practice of the Government to make grants of land to persons in possession, or partly in possession, of the same.

20. At the time I made application for the said ten chains, viz., in July, 1877, the question of ownership of the lands in question, and other lands on the said Common, had for years been prominently before the Dominion Government under the application of the Point holders, as stated herein, and in the 20 month of May of the same year the Government had, as before stated, decided against the joint claim of the Point holders, but reserved any rights which could be made out under the Manitoba Act, and when the parties named in the 14th paragraph of this answer made applications under the Manitoba Act for portions of said lot 35, said applications were a matter of public notoriety, and were well known to the said Logan and those claiming under him, as well as to the Dominion Government.

21. At the time of the said application of the Point holders the names of William Logan, or those now claiming under him, were never mentioned in connection with said application and neither the said Logan or those claiming 30 under him were ever regarded as claimants under the joint application of the said Point holders.

22. Alexander J. Belch, claiming under said Logan, made application to the Government under the Manitoba Act for a patent for a portion of lots C, F and G, in block 14, and he then applied to me to make a declaration as to the said Logan's possession and occupancy of said parts of lots C and F, but I then explained to the said Belch that while said Logan was really in possession of the southern portions of said parts of lots C and F in the fall and winter of 1870 by having a small log house thereon, that said Logan was not in possession of said parts of lots on the 15th July, 1870, and I agreed to make and did 40 make, a declaration for him that the said Logan was in possession of the said parts of lots C and F in the year 1870, as in fact I believed he was (of which belief I repeatedly informed said Col. Dennis and all others connected with the

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(Government with whom I came in contact) and further, that owing to the claim of the Point Douglas holders, or their trustees, having before that time been refused, I could state that the said Point holders as such made no claim to the said parts of lots, and that they acknowledged the claim of said Logan and those claiming under him, and I further alleged in the said declaration that I had a prior title to Logan to the said parts of lots, but was willing to forego my claim to the said portion of lots C and F.

23. Notwithstanding the said declaration and declarations made by others on behalf of the application of the said Belch, the patent from the Crown was never granted for the same and I was afterwards informed by the Deputy Minister of the Interior, or the Surveyor-General, that I could abandon my claim in favor of the Government if I cared to do so, but that I had no power to transfer any right in this way to said Belch or any other person, and that the Government could see no cause whatever for recognizing the claim of the said Belch, and would not do so—this being the matter referred to in the eighth paragraph of this information.

24. After the granting of the patent to me of seventeen acres of land, including said lots C, D, E and F as herein stated, said Logan made application to the Government for a patent to said lots C, D, E and F, and the Dominion Government after giving the matter careful consideration refused the application upon the ground that he could make out no case to entitle him to the same and that the claim of the said Logan was not a valid one.

25. I admit the allegations contained in the ninth paragraph of the Information in so far as they relate to the determination of the Government to give to me 25 acres out of and from said lot 85, but I say that the Deputy-Minister of Justice in the said report in express terms declares his approval and recognition of my claim, but owing to the special circumstances and chiefly owing to the increased value of the land covered by my claim as in the said report pointed out, he was of opinion that 25 acres would be a fair compromise of my claim, and that this amount should be patented to me in lieu of my whole claim to the said ten chains but in fact only 17 acres were ever conveyed to me pursuant to the said compromise, which said 17 acres includes the lands in question in this cause and I say it was then intended as far as practicable that the whole 25 acres were to be off the eastern end of said lot number 85 and adjacent to my said residence.

26. That at the time of the making of the said report by the Deputy-Minister of the Interior, which report was concurred in by the Deputy-Minister of Justice and the Right Honorable Sir John Macdonald, Minister of the Interior, the matter of the ownership of said lot 85 had for many years been before the officials of the Dominion Government and they were in all respects most familiar with the various claimants to all portions of said lot 85.

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27. I positively deny the allegations contained in the twelfth paragraph of the Information in this cause, in regard to my having agreed to give the Honorable John C. Schultz a half interest in the said property for his influence in obtaining the patent of the said lands for me, and I say positively that the said allegations are wholly false.

28. On the 12th November, 1879, I agreed to sell and did sell to the said Schultz a half interest in the said lands for what to me at that time was a full and ample consideration in cash and equivalent to cash for the said half interest.

29. I deny the allegations contained in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth paragraphs of the said 10 Information, as far as the same affect my ownership of said lots C D E and F.

30. In answer to the twenty-first paragraph of the said Information I say that it is not the practice of the Department of the Interior to grant patents under the Manitoba Act, unless the papers under which application for such patents show the parties making the application clearly entitled to the same and when the Deputy-Minister of the Interior, and the Surveyor-General as well as the Honorable, the Minister of the Interior united in affirming my claim to the lands afterwards patented to me under the said Act with a full knowledge of the whole case extending over years of investigation, this Honorable Court will not at this late date, (if at all) interfere with the then 20 determination of the Government, as expressed by Order-in-Council, of the 3rd February, 1879.

31. In further answer to the twenty-first paragraph of the said information I say that it is not the practice of the Department of the Interior to allow any adverse claim whatever falling short of the full requirements of the Manitoba Act to intervene to prevent patents being granted confirming titles made out under the said Act, as is attempted in the present case, and I deny that there is any established practice in the Department of the Interior extending to the Province of Manitoba (if at all) whereby a rule is established to grant patents, or even preferences upon the grounds of possession or improvements, and I put the 30 Informant to strict proof of the same.

32. In answer to the twenty-second paragraph of the said Information I say that at the time the Point holders' joint application was before the Government they, the said Point holders, appointed trustees from amongst themselves, of whom I was one, and said trustees, pending the result of the said application, assumed to deal with and control the whole of said lot thirty-five, and to sell and allot to the Point holders some small lots off said lot thirty-five, and after the Government rejected the application of the said Point holders, as aforesaid, notwithstanding the said rejection it was agreed on behalf of the Government, and afterwards duly ratified, that in consideration of the improvements to the 40 remainder of the lands by the exertions of the said trustees, that all such sales

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and allotments made by the said trustees should be approved of, and confirmatory patents made by the Government to the holders of the said small lots, but the said trustees did not furnish to the Government a full list of all the lots so sold or allotted, and when the patent was made to me of the said seventeen acres I found that in that patent was included some small lots theretofore conveyed by the said trustees to other parties, and upon observing this I at once wrote the Department on the subject and had the said small lots conveyed to the parties entitled in manner aforesaid, whereupon other lands were patented to me in lieu thereof, and this is what is referred to in the twenty-second paragraph of the said Information.

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33. It is true, as alleged in the twenty-third paragraph of the said Information, that in making the corrections stated in the last preceding paragraph I did not include lots C, D, E and F, for the reason that the said last named lots had never been sold or allotted by the said trustees, and the said Logan, or those claiming under him, had never in any way been recognized by the said trustees, nor, so far as I know, was his claim ever in any way recognized by the Dominion Government, and to have included lots C, D, E and F would have been a fraud upon the Government.

34. I deny the allegations contained in the fourteenth paragraph of the said Information and put the parties to strict proof of the same, for to the best 20 of my knowledge the said Logan never was the owner of said Hupé lot, afterwards known as lot 24 of the Dominion Government survey or of any other Parish lot on Point Douglas and such a pretended ownership was never known to said Point holders, or acknowledged by them, or by the Government of the Dominion of Canada.

35. The statement in the twenty-fourth paragraph of the said Information that I have taken forcible possession of a large portion of the said lots C, D, E and F is untrue, and I say that prior to the granting of the said patent to me nearly the whole of the said last named lots, and in fact the whole of the land in question, were in a state of nature and had never been fenced, built 30 upon or cultivated in any way, and after obtaining the said patent in 1879 I caused the said lots to be fenced, and placed tenants upon parts of the said lots.

36. I submit that the relator has shown no legal or equitable claim whatever upon which to found her right to set aside my said patent and to obtain a patent to herself from the Government for the lands in question in this cause.

37. I submit that parties preferring claims to lands in Manitoba and bringing themselves within the provisions of the Manitoba Act, are the owners of such lands in fee, and that it is not within the power of the Dominion Government or the Department of the Interior to deprive them of such lands, and that patents granted in such cases by the Dominion Government do not confer title, 40 but are (after investigation) only confirmatory of a title theretofore had by the

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applicant, and that no practice of the Department of the Interior or of the Dominion Government could, or can, exist of a nature to deprive parties establishing their rights to lands under the Manitoba Act, of such land or to grant these lands to parties who may have gone into possession since the 15th July, 1870, and on this ground the Information is bad in law, and I claim the same benefit under this objection as if I had formally demurred to the same.

38. I submit further that the Department of the Interior and the Government having had the question of the ownership of the lands known as Point Douglas and Point Douglas Common, and all the parts of the same of which this land is a part under consideration for eight or nine consecutive years prior 10 to the third of February, 1879, being the date of the order-in-council upon which my said patent was granted, Her Majesty's Attorney-General or the relator cannot now be heard to say that the said patent was granted improvidently or through error.

39. I aver that the granting of the said patent to me was not the result of improvidence or error, and that for many years prior to and at the time of the granting of the said patent, viz: the 9th December, 1879, the Government of the Dominion and the Department of the Interior had full information as to the ownership of the lands covered by my said patent and I submit that in any event the Government having by the said order-in-council, of the 3rd February, 20 1879, and by the said patent of the 9th December, of the same year in express words affirmed my title to the said lands, the Honorable the Attorney-General is now estopped from setting up title to the said lands merely upon the ground of improvidence or error, and these are the only grounds upon which relief is sought by the said Information.

40. I submit further that by the express terms of the said order-in-council my right under the Manitoba Act, to the lands applied for by me, is affirmed, but owing to the increased value of the said lands and the peculiar circumstances of the case the Dominion Government offered me the lands referred to in the said order-in-council by way of compromise in settlement and liquida- 30 tion of my said claim, and I accepted the said offer and in pursuance thereof received my said patent and that it is contrary to the practice of this Honorable Court to grant relief in cases of this kind and that the Honorable the Attorney-General is now estopped from saying that the Government made the said compromise through error or improvidence.

41. I aver that in the month of November, 1882, the relator herein filed her bill of complaint in this Honorable Court and made the Informant herein a party defendant to the cause, and the present defendants in this cause, also party defendants therein, for the purpose of establishing her right to the lands in question in this cause under the Manitoba Act, and after my answer was 40 duly filed therein in substance similar to this my present answer, issue was taken thereon by the plaintiff in that cause and the said cause was heard before

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the Honorable the Chief Justice of this Honorable Court, and after a very lengthy and full investigation and hearing of the said cause, the bill of complaint was dismissed with costs. To the said bill of complaint the Informant herein filed his answer, and at the said hearing was represented by counsel.

42. At the said hearing an application was made on behalf of the plaintiff to amend her bill of complaint by setting up the facts alleged in the Information herein, by alleging that even though William Logan, through whom the plaintiff claimed title, was not in possession of the lands in question on the 15th day of July, A.D., 1870, still that he went into possession of the lands in the bill described shortly after the said 15th July, 1870, and it was a custom of the Department of the Interior of the Dominion Government to allow those persons who were in possession of Government lands to purchase them at an upset price before granting or selling the lands to other persons not in possession. The presiding judge, upon the said application, postponed his judgment upon the same until all the evidence upon the hearing of the said cause should have been closed and allowed the said plaintiff to give evidence of the facts alleged in the Information herein, as if the said amendment asked for by the plaintiff had been made. The said plaintiff thereupon gave evidence to prove the facts alleged in the said Information and the questions of fact involved in the said Information herein were fully heard by the said learned judge at the said hearing, and thereupon the said learned judge stated that the plaintiff had not established the existence of any such custom as that alleged in the said Information or any case that would entitle the plaintiff to succeed if the said amendment were allowed of the said bill of complaint, and refused to allow the said amendment, and I now submit that the Informant herein could, in his answer to the said bill, have set up the facts alleged in the Information herein and is estopped by the judgment in the said cause from claiming the relief asked for in the Information herein.

43. I submit that the informant herein by laches and delay is estopped from prosecuting this suit.

(Signed) WM. G. FONSECA.

{ Sworn before me at the City of
Winnipeg, in the County of Sel-
kirk, this 2nd day of December,
A.D., 1885. 30

(Signed) A. E. MCPHILIPS,
A Com. in B.R. etc.

REPLICATION TO ANSWER OF DEFENDANT, FONSECA.

The Informant joins issue on the answer of the defendant Fonseca.

Dated January seventh, A.D. 1886.

PATTERSON & BAKER,

Solicitors for Informant.

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ANSWER OF DEFENDANT, SCHULTZ.

The Answer of the defendant, John Christian Schultz, to the Information of Her Majesty's Attorney-General for Canada, at and by the relation of Eliza Mercer, of the City of Winnipeg.

1. In answer to the said Information I, the said John Christian Schultz, say as follows: I am not aware of any fraud on the part of the defendant Fonseca, and I deny all charges of fraud or collusion between me and my co-defendant made against me in the said Information.

2. I positively deny the allegations contained in the twelfth paragraph of the Information in this cause in regard to my co-defendant having agreed to 10 give to me a half interest in the said property for my influence in obtaining the patent of the said lands for my co-defendant, and I say positively that the allegations are wholly false.

3. I admit there was an agreement between myself and my co-defendant, Fonseca, and a deed to me in pursuance thereof, covering one-half interest in certain lands, including the lands in the Bill of Complaint mentioned. I claim such half interest in the said lands and I say that I purchased the same from my co-defendant bona fide and for a valuable consideration which consideration was fully paid and satisfied before I had notice of any claim of the plaintiff or any one else, and I submit that this relator takes any interest she 20 may have in said land subject to my rights under the said deed.

4. I say that the patent to the defendant Fonseca was issued by the Crown to said defendant after full knowledge and investigation of all the facts and circumstances connected with the right to said land and of the claim of the said relator, Eliza Mercer, and that the said patent was not issued by reason of any fraud, error or improvidence.

5. I submit that I am an innocent purchaser of the said property for value and without notice and that the relator by standing by while I dealt with the said property and by her laches is estopped from enforcing her claim, if any, against me.

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6. I submit that the relator has shewn no legal or equitable claim whatever upon which to found her right to set aside my said co-defendant's patent and to obtain a patent to herself from the Government for the land in question in this cause.

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7. I submit that parties preferring claims to lands in Manitoba and bringing themselves within the provisions of the Manitoba Act are the owners of such lands in fee, and that it is not within the power of the Dominion Government or the Department of the Interior to deprive them of such lands and that patents granted in such cases by the Dominion Government do not confer title but are after investigation only confirmatory of a title theretofore had by the applicant and that no practice of the Department of the Interior or of the Dominion Government could or can exist of a nature to deprive parties establishing their right to lands under the Manitoba Act of such lands or to grant these lands to parties who may have gone into possession since the 15th July, 1870, and on this ground the Information is bad in law and I claim the same benefit under this objection as if I had formally demurred to the same.

8. I submit further that the Department of the Interior and the Government having had the question of the ownership of the lands known as Point Douglas Common and all the parts of the same, of which this land is a part, under consideration for eight or nine consecutive years prior to the 3rd of February, 1879, being the date of the Order-in-Council upon which my said patent was granted, Her Majesty's Attorney-General or the relator cannot now be heard to say that the said patent was granted improvidently or through error

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9. I say that the granting of the said patent to my co-defendant was not the result of improvidence or error, and that for many years prior to and at the time of the granting of the said patent, viz., the 9th December, 1879, the Government of the Dominion and the Department of the Interior had full information as to the ownership of the lands covered by my co-defendant's said patent, and I submit that in any event the Government having by the said Order-in-Council of the 3rd February, 1879, and by the said patent of the 9th December of the same year in express words affirmed my co-defendant's title to the said lands, through which I claim the Honorable the Attorney-General is now estopped from setting up title to the said lands merely upon the grounds of improvidence or error, and these are the only grounds upon which relief is sought by the said Information.

10. I submit further that by the express terms of the said Order-in-Council my rights under the Manitoba Act to the lands applied for by my co-defendant, through whom I claim, is affirmed, but owing to the increased value of the said lands and the peculiar circumstances of the case the Dominion Government offered my co-defendant the lands referred to in the said Order-in-Council, by way of compromise, in settlement and liquidation of my co-defendant's said claim, and my co-defendant accepted the said offer, and in pursuance thereof received my co-defendant's said patent, and that it is contrary to the practice of this Honorable Court to grant relief in cases of this kind and that the Honorable the Attorney-General is now estopped from saying that the Government made the said compromise through error or improvidence.

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11. I aver that in the month of November, the relator herein filed her Bill of Complaint in this Honorable Court and made the Informant herein a party defendant to the cause, and the present defendants in this cause also party defendants therein for the purpose of establishing her right to the land in question under the Manitoba Act, and after my answer was duly filed therein in substance similar to this my present answer, issue was taken thereon by the plaintiff in that cause, and the said cause was heard before the Honorable the Chief Justice of this Honorable Court, and after a very lengthy and full investigation and hearing of the said cause, the Bill of Complaint was dismissed with costs. To the said Bill of Complaint the Informant herein filed 10 his answer and at the said hearing was represented by Counsel.

12. At the said hearing an application was made on behalf of the plaintiff to amend her Bill of Complaint by setting up the facts alleged in the Information herein by alleging that even though William Logan through whom the plaintiff claimed title was not in possession of the lands in question on the 15th July, 1870, still that he went into possession of the lands in the Bill described shortly after the said 15th July, 1870, and it was a custom of the Department of the Interior of the Dominion Government to allow those persons who were in possession of Government Lands to purchase them at an upset price before granting or selling the lands to other persons not in possession. 20 The presiding Judge upon the said application postponed his judgment upon the same until all the evidence upon the hearing of the said cause should have been closed, and allowed the said plaintiff to give evidence of the facts alleged in the Information herein, as it the said amendment asked for by the plaintiff had been made. The said plaintiff thereupon gave evidence to prove the facts alleged in the said Information and the questions of fact involved in the said Information herein were fully heard by the said learned Judge at the said hearing, and thereupon the said learned Judge stated that the plaintiff had not established the existence of any such custom as that alleged in the said Information or any case that would entitle the plaintiff to succeed if the said 30 amendment were allowed of the said Bill of Complaint, and refused to allow the said amendment and I now submit that the Informant herein could in his answer to the said Bill have set up the facts alleged in the Information herein; and is estopped by the judgment in the said cause from claiming the relief asked for in the Information herein.

13. I submit that the Informant herein by laches and delay is estopped from prosecuting this suit.

(Signed) JOHN SCHULTZ.

Sworn before me at the City of Ottawa,
in the County of Carleton, in the
Province of Ontario, the twelfth day 40
of January, 1886.

(Signed) JOHN CHRISTIE, [Seal.]
Notary Public.



REPLICATION TO ANSWER OF DEFENDANT, SCHULTZ.

The Informant joins issue on the answer of the defendant Schultz.

Dated, first day of February, A.D , 1886.

PATTERSON & BAKER,
Informant's Solicitors.

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EVIDENCE.

IN EQUITY.

Before Chief Justice Wallbridge.

ATTORNEY-GENERAL vs FONSECA AND OTHERS.

WINNIPEG, November 11th. 1886.

For the Attorney-General appear MESSRS. EWART AND PATTERSON.

For Fonseca appear MESSRS. GLASS & GLASS.

For Dr. Schultz appear Messrs. HOWELL AND TUPPER.

DIRECT EXAMINATION.

WILLIAM LOGAN, being duly sworn, testified as follows:—

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By Mr. Patterson :

Q. Mr. Logan, you were the owner of some land near the corner of Main and Fonseca streets ?

A. Yes.

Q. What land, Mr. Logan, was it—what corner ?

A. Lots C, D, E and F, block 14, corner of Fonseca.

Q. Block 14 in any particular survey ?

A. Sinclair's survey.

Q. On which corner ?

A. It is on a corner; there is two lots on a corner; the corner is 20 lettered A.

Q. I am speaking of Fonseca Street; perhaps you would recognize this map better ? (A map is shown witness which is afterwards put in, marked Exhibit 3.)

A. Letter D corners on Fonseca and Main; A is the corner of Logan and Main.

Q. Is your land on the east or west side of Main street ?

A. On the east side of Main street.

Q. C, D, E and F, you state, were the letters; do you know where Fonseca street is? Without reference to any map at all, do you know where Fonseca street is ?

A. North of the block.



By his Lordship :

Q. North of what block ?

A. Block 14.

Q. Does that mean it is part of the block, or what ?

A. The boundary line—Fonseca street bounds, is the street on the north of block 14.

By Mr. Patterson :

Q. Now where is Lot D ?

A. The corner lot.

Q. What corner ?

A. The corner of Fonseca and Main.

Q. You owned some land there, you say, and you say you owned C, D, E and F ?

A. Yes

Q. When did you first own this land, and how did you come to own it ?

A. I first staked out the land in '68.

Q. Well, then, just give us the history of that land now ?

A. I staked out more than that.

Q. Well, just give us the history of what you did ; how you held the land ?

A. In the fall of '69 we plowed around some of it.

Q. Some of what ?

A. Round the land.

Q. Which land ? That of which C, D, E and F is part ?

A. Yes.

Q. Then you plowed around more than C, D, E and F, in the fall of '69 ?

A. Yes.

Q. What was the next thing you did ?

A. In the spring of '70 a building of logs was put on the land.

Q. What next ?

A. We continued the building.

Q. And where did you put the first building ?

A. On D—I think it was partly on D and partly on C—very little on D ; I think the south corner was on C.

Q. When did you put that up and go into occupation of it ?

A. We went into direct occupation in September, 1870.

Q. Did you put up any more building after that ?

A. We continued building ; built another building in the fall of '70.

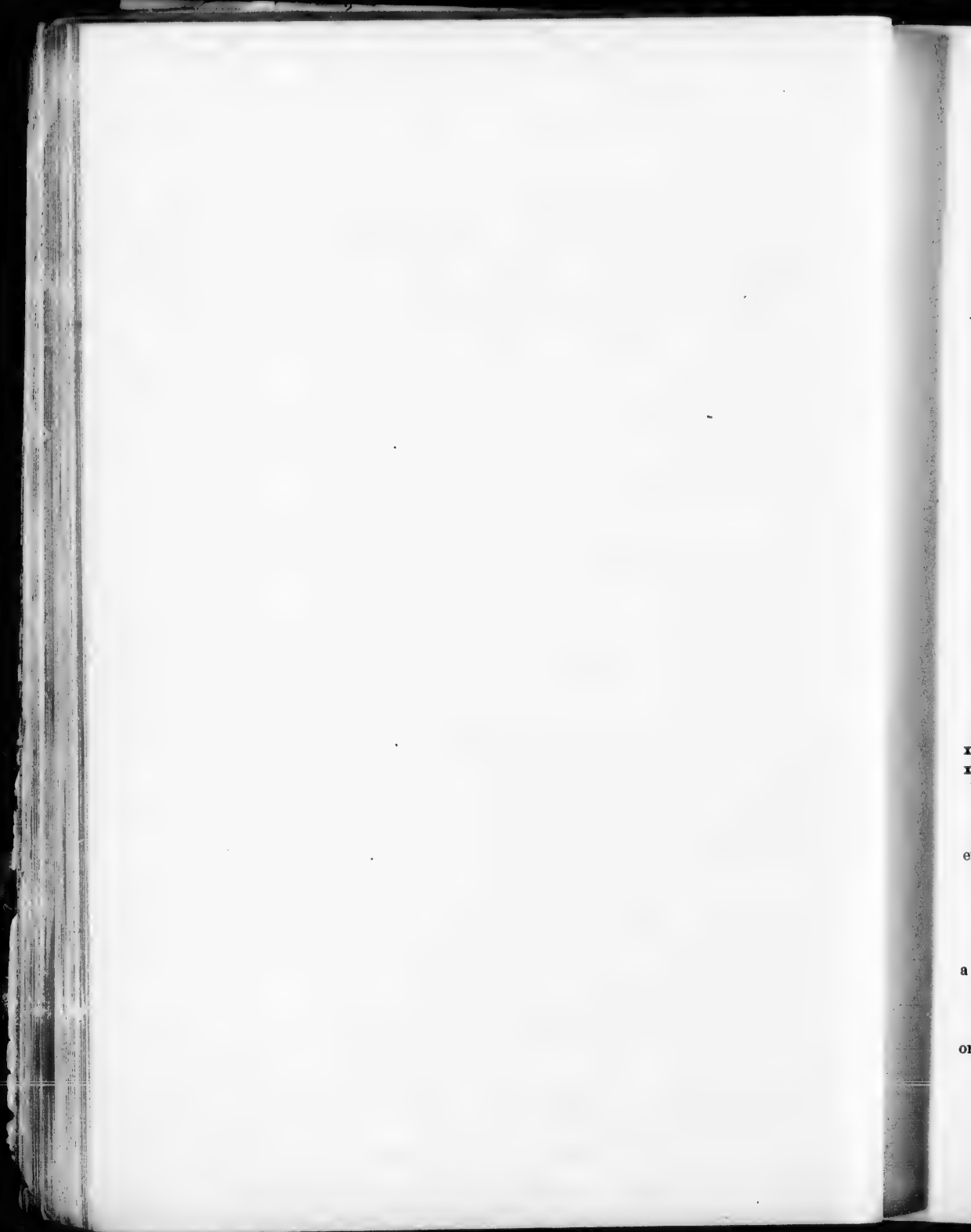
Q. Where was the second building put up ?

A. On D.

Q. Wholly on lot D ?

A. I think so.

Q. What kind of building was that ?



A. A log building.

Q. Is this building there still?

A. Yes.

Q. Do you remember the name of any person who assisted you in putting up the second building?

A. I gave it out to contract

Q. To whom?

A. Gaudry.

Q. Did you put up any more buildings after that?

A. I had a stable put up before that—before the building on lot D. 10

Q. Whereabouts was the stable?

A. I think it was on part of E; that is, in rear of D.

Q. Before you put up that building?

A. Before the second building was finished

Q. In rear of what lot?

A. In rear of first and second building.

Q. Then did you afterwards put up any more buildings?

A. Yes.

Q. What more?

A. In '71 I joined the building north of the first building on lot D. 20

Q. Is that building also there still?

A. Yes.

Q. What kind of a building is it?

A. Frame; half logs, the upper part frame.

Q. Can you give us the size?

A. The size of the first building was 14 x 16; the second building was 33 x 23; the stable, I think, is 20 feet square, and the other building, I think, is 23 x 18.

By His Lordship :

Q. These appear to have been all on D, excepting a small part of the south end of the first one, which is over on C?

A. A stable on E.

By Mr. Patterson :

Q. Do you remember at how early a date Fonseca street was marked out as a street?

A. I think in '71.

Q. How did you use these buildings that you have described?

A. I used the first one as a dwelling for myself and the second one I let to one McVicar.

Q. Which McVicar?

A. George D. 40

Q. He lives in the city, does he not?

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lots

A. I think so.

Q. And the third one?

A. I used that.

Q. In what way?

A. As a hotel or boarding house

Q. And the stable you used, I suppose, as a hotel stable?

A. No.

Q. Your own?

A. Yes.

Q. Down to what date did you use this building in this way; perhaps 10 you divided the use; tell us how long you continued to live there?

A. Till two years ago, I think.

Q. You lived there?

A. I occupied the premises.

Q. The whole?

A. Not the whole; I sold part.

Q. Where did you live?

A. On the premises in the second building. The first and second buildings I had put up in '71 and '72, along there.

Q. How much land did you use in connection with this building? 20

A. About two acres.

Q. What would be about the boundaries of these two acres?

A. I think it would take in Austin Street to the east.

Q. Now the other boundaries?

A. Main Street on the west and Fonseca Street on the north.

Q. And on the south?

A. Lot lettered B—B and G.

Q. G is in the rear of B?

A. Yes.

Q. Was that the only title that you had to this land? 30

A. I believed that I had another title besides occupying in this way; I believed that I did have.

Q. What was that?

A. By owning lot 24 on Point Douglas.

Q. Explain that, Mr. Logan, please. How would that give you a title to C, D, E and F?

A. I bought lot 24.

Q. Well, supposing you owned lot 24, how would that give you a title to lots C, D, E and F?

A. It gave me a right to the Common. 40

Q. Not the whole Common do you mean?

A. To that part of it, or some part of it.

Q. Why to that part of it, more than any other part?

A. Simply because I located on it.

Q. What was the foundation of that right?



A. Being an owner on Point Douglas ; a river lot on Point Douglas.

Q. You made sale of portions of this land. Did you make any conveyance or mortgage of C, D, E or F?

A. I think the first interruption was a mortgage.

Q. That was the first transaction or conveyance, you say ; the first thing you did ?

A. Yes.

Q. Is that the mortgage that you made of that land (showing witness a paper) ? Whose signature is that ?

A. I do not think that is the first one.

Q. No, we have the first one here. Is it your signature ?

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A. Yes.

Q. The mortgage is to whom ?

A. One William Fraser.

Q. How early was that made, in what year ?

A. I think it was in '72.

Q. Do you recollect how much land it included ?

A. I do not know whether it took up the four lots.

Q. And then what next do you remember conveying ? What dealing do you remember you had with the land afterwards ?

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A. There were one, two or three mortgages, I think, before I made any sales.

Q. What is that you have now in your hand ?

A. A mortgage of '76.

Q. To whom ?

A. Robert Bown.

Q. What time in '76 ?

A. 22nd March, 1876.

Q. That is your mortgage, is it ?

A. Yes.

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Document put in marked Exhibit 4.

Q. What was the first sale you made of any portions.

A. I think it is 40 feet to the south of C.

Q. To whom ?

A. To one John Freeman.

Q. Do you remember any other sale that you made at any early date ?

A. In '72 I sold the Hupé lot 24, Point Douglas.

Q. Give us an idea when the 40 feet on lot C was sold ?

A. I think it was in '72. I have not the date.

Q. You sold the Hupé lot in '72 ?

A. Yes.

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Q. That Hupé lot is no part of C, D, E and F ?

A. No, except it might be appurtenant

Q. Any other sale of this lot C, D, E and F.

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A. I think the next sale was the northern corner of D to Mercer.

Q. Is this the deed?

A. Yes.

Q. What Mercer?

A. Frederick C. Mercer.

Q. What is the date of that deed?

A. The 20th June 1886,

Document put in, marked Exhibit 5.

Q. This really included part of D and E.

Document read.

Q. Did the person to whom you sold the land use it in any way? What did they do with the land? 10

A. I think Mercer left his premises.

Q. You retained some portion yourself? Up to what time?

A. About two years ago.

Mr. Glass objects that the deed to Mercer expresses only four chains; whereas it is five chains from Main street to Austin street.

Description read.

By Mr. Patterson :

Q. When did you first hear of any dispute to your title to these properties? 20

A. About '78. The year '78.

Q. Who disputed it, and why?

A. Schultz.

Q. Anybody else?

A. In '79, or later, Fonseca.

Q. What objection was urged against your title by Schultz?

A. He claimed the Hupé lot by claiming lot 24 on Point Douglas.

Q. These lots being appurtenant to that, that is how the dispute arose?

A. Yes.

Q. You became the owner of the Hupé lot?

A. Both I and Schultz claimed the Hupé lot. 30

Q. But you had sold the Hupé lot?

A. Yes, I did.

Q. To whom did you sell the Hupé lot?

A. To McDonald.

Q. You mean that you claimed it after you had sold?

A. No.

Q. Then, had Schultz bought?

A. Yes, he bought from McDonald.

Q. Then, you say, because he owned the Hupé lot, he claimed also C, D, E 40 and F.

A. That is as I understood; he never said so.

Q. He never said so to you ?

A. No.

Q. Did he take any active measures to dispossess you ?

A. No.

Q. Well, you say Fonseca next disputed your title about '79 or afterwards. What was his objection to your title ?

A. He said that he had received a patent from the Government and that my claim would have to come through him.

Q. How did he mean ? Come through him ?

A. From having received a patent from the Crown.

Q. What did he say ? Did he say he would do anything ?

A. He mentioned at one time that he would give me a quit deed for part of it.

Q. What part ?

A. The part the second building was on.

Q. Did he ever make any claim to it against you before he got the patent ?

A. No.

Q. Was he ever in possession of any portion of that land which you claim as yours ?

A. No,

Q. Do you mean C, D, E and F ?

A. Yes.

Q. Do you remember he said he built a store on the west side of Main street ?

Mr. Glass objects that the claimant says he went into possession on before the 15th July and made improvements, and therefore he has a pre-emption ; but whether Fonseca was in possession prior to that is not in issue.

By Mr. Patterson :

Q. Have you told us all the sales that you ever made of the balance of your claim ?

A. Well, in fact, I have disposed of the whole of it up to now.

Mr. Glass submitted that this could not be spoken to as far as the relator's interests were concerned.

Mr. Patterson.

Q. What other sales did you make of portions of C, D, E and F and to whom ?

A. McDonald. He had a partner but I forget his name.

Q. Any other sales ?

A. To Schultz.

Q. The defendant in this case ?

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A Yes.

Q. Anybody else ?

Mr. Tupper objects that this is not the proper way to prove a sale.

Q. You sold parts of which one of these lots to McDonald ?

A. I do not know, I say parts of C D E and F.

Q. What do you mean ?

A. Parts of that possession.

Q. Taking the whole as one, you sold some portion of one of the lots to somebody—to McDonald ?

A. Yes.

Q. And you sold another portion of the property to defendant, Schultz ? 10

A. If you speak of it as one property.

Q. We will call C, D, E and F one property; and in that case you sold part to McDonald and part to Schultz ?

A. Yes, and part to Freeman as I said before.

Q. Any other subsequent sales of any portion of that property ?

A. I think not.

His Lordship: He said he parted with the whole of it.

Witness: That is the whole of it.

Q. Did you sell Fonseca any of it ?

A. No, I bargained to sell but it was never carried out. 20

Q. Did you sell any to Mr. Belch ?

A. No.

Q. Did you get paid for any of this land that you sold to Schultz ?

A. Yes.

Q. How much did you get for the lots that you sold to Schultz ?

A. Something over \$1,800.

Q. Were you ever at Ottawa, Mr. Logan ?

A. No.

Q. When did you first make an application for a patent in this land—C, D, 30
E and F ?

A. I think it was in '81.

Q. Did you ever make more than one application ?

A. No.

Q. Is that your signature (showing witness a paper) ?

A. Yes.

Q. Is that the application which you made for a patent ?

A. That is the application.

Q. That is your application for a patent of this property ?

A. Yes.

Q. Look at it again and see if you can tell us what is the date of it ? 40

A. I see it is dated the 29th April, 1882.

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Q. You said awhile ago that you never made but one application ?
A. Yes.

Document read. Logan fyle put in—William Logan fyle from the custody of the Department of the Interior, produced by Mr. Whitcher, Dominion Land Agent, being Departmental Fyle No. M.A. 2172.

Q. When was it that you first had knowledge that Mr. Fonseca had applied for a patent for this land—C, D, E and F? You know he has got a patent for the property ?

A. He told me he had a patent.

Q. For this property ?

A. Yes.

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Q. When did you first become aware that Fonseca had applied for a patent for this land ?

Mr. Glass objects.

Objection over-ruled.

Q. When did you first become aware that Fonseca had applied for a patent for this land ?

A. I think in '79. I merely heard say. I thought it was so.

Q. How was that ? Who told you ?

A. I do not remember who said so; it was only rumor.

Q. What was the rumor ?

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A. A report.

Q. To what effect ?

A. That Fonseca had applied.

Q. For a patent.

A. Yes.

Q. For what ?

A. For lands covering lots C, D, E and F.

Q. When did you first hear that he had got the patent for your property ?

A. I could not tell you; '79 or '80—'79 I think.

Q. Which were you aware of first—that he was applying for a patent, or that he had got a patent ? Which did you know first ?

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A. The first I heard was he had applied for a patent

Q. But you took no action then. When you heard he was applying for a patent to cover your property, and before you got it, you took no action ?

A. None but the application I made.

Q. Why did you not make your application earlier than 1882 ?

A. I was waiting. I believed that the Government were about to make a settlement about the Point Douglas Common; that the Government were going to grant the lands on Point Douglas Common; and I was waiting.

Q. Did you ever receive any notice to prove your claim ?

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A. No.

Q. You say you heard Fonseca got the patent in '79 or '80, and you continued to live there until '84, about two years ago, you say?

A. Yes.

Q. Did Mr. Fonseca exercise any acts of ownership in this property, C, D, E and F, after he got the patent, and if so, what acts of ownership and how soon after—what year?

A. I think in '83 he had staked round three perches on lot D. I could not swear that he did so; he was round there himself.

Q. You don't know of any acts of ownership exercised by him?

A. No.

Q. Up to what year?

A. 1883.

Q. He says he put a fence round a portion of the property. Did he do that?

A. I thought it was Schultz put the fence round.

Q. When?

A. I think it was '83 or '84.

Q. What kind of a fence—post and wire and boards?

A. I think it was boards, that is, posts with boards nailed on

Q. Were there any other improvements? Were there any buildings put up 20 by Fonseca and Schultz?

A. Not that I am aware of.

Q. Did they collect rents, do you think?

No answer.

Q. And that is all you know of the acts of ownership exercised by Mr. Fonseca or Dr. Schultz?

A. That is all?

Q. You say it was in '83 or '84 that the fence was put up?

A. Yes.

Q. Was there any cellar to these buildings that you built Mr. Logan? 30

A. I think there were cellars in the three buildings.

Q. How were they made, these cellars?

A. They were encased with wood.

Q. Where are they; are they on a level with the ground?

A. Under the floor.

Q. On a level with the ground?

A. Dug out

Q. Excavated?

A. Yes.

Q. Did any one ever interfere with you when you were putting up these 40 buildings?

A. Nobody.

Q. Who paid taxes up to '79, Mr. Logan, on this property?

A. I think I paid the taxes up to '79 on the balance that I owned then, and up to '80 I think

had

Q. Up to what time ?

A. I think '81 ; I think 82.

Q. Did anybody interfere with your paying taxes ?

A. No.

Cross-examination by Mr. Glass.

Q. You say that you went into possession of part of the property in question in 1870. You put logs there to build a small house ?

A. In 1870 I moved my family and all my effects in.

Q. To where ?

A. Into the first little house that I built.

Q. How were you employed at that time ?

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A. Clerking for one E. L. Barber, besides farming ; not for Barber

Q. That is, you were partners in the farming ?

A. Yes.

Q. Who were partners ?

A. I and Barber.

Q. That is, you were partners in the farming ?

A. Yes.

Q. How do you mean ?

A. We farmed on shares.

Q. When did you commence clerking for Barber ?

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A. In '68 I think.

Q. Mr. Barber is still in the City of Winnipeg, I believe ?

A. Yes.

Q. Where was his store when you commenced clerking for him in '66 ?

A. On Point Douglas.

Q. How far from lots C, D, E and F ?

A. About half a mile.

Q. Half a mile north-east was it ?

A. Yes.

Q. That would be on the northern part of Lot 35 ?

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A. Yes.

Q. In 1869 did Barber build an out building on B ?

A. Yes.

Q. In Lot 14 Barber commenced to build a store ?

A. Yes, in the fall of '69.

Q. When was that store finished Mr. Logan ?

A. I think it was occupied in September, '70.

Q. And Barber went into the store in September, '70 ?

A. Yes.

Q. On that point you are quite sure ?

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A. Yes.

Q. Up to that time he had been doing business north of Lot 35 and you had been clerking for him there ?

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A. I was in St. Paul parish. That is the only store in Winnipeg.

Q. He had a store in Winnipeg, north of Lot 85, and that is where you were clerking for him, except when you went to St. Paul parish.

A. Yes.

Q. Are you quite sure that it would not be later than September, '70, when he had that store finished?

A. '70.

Q. You are quite sure?

A. Yes.

Q. Now, you had been living in the back of his old store, had you not? 10

A. Yes.

Q. That is half a mile away from the new place? How long did you live in the back of the old store after Barber moved into the new one?

A. I think we moved about the same time.

Q. Now, I want you to be particular about that. It is not very material in this case, but we had it up before, you know. How long did you remain in the back of Lot 85 after Barber came to the new store on Lot B?

A. It might be a couple of weeks.

Q. I believe Barber's store was not finished when he moved into it; was it?

A. Not quite. Barber's store was finished, I think, in the spring of '71. I 20 think it was plastered in the fall of '70.

Q. Well, then, what part of the finishing was it that was done in '71?

A. The painting outside.

Q. Was the lumber for Barber's store lying round about outside the store up to 1871?

A. There was no lumber there except what was put into the building.

Q. There was nothing left over after Barber had done building. No lumber or anything of that kind?

A. I think not. The building was finished.

Q. Are you prepared to swear, now, that the plastering was not done in 30 the spring of '71?

A. I think it was done in '70—in the fall of '70.

Q. When you say the fall of '70, can you fix the month? It was not quite finished when you moved in?

A. No.

Q. Now, do you remember who did that plastering?

A. No.

Q. Do you remember where they got the sand for making the plaster?

A. Yes.

Q. Where?

A. On Point Douglas. 40

Q. Do you know that they dug a hole on Lot C, out of which they got the sand?

A. No, there was no hole.

Q. There was no hole dug on Lot C?

A. No.

Q. And if Senator Sutherland says there was a hole there, you are prepared to contradict him?

A. I guess so.

Q. Your little log building, Mr. Logan, that did not take very long. It was only 14 x 16, and I think evidence was given that that was put up in a week?

A. Yes.

Q. It only took about a week to put it up?

A. Perhaps a shorter time.

Q. It was taken down from some other place and put there, was it not? 10

A. Yes.

Q. Do you call that your first building?

A. Yes.

Q. Did you thatch it, and plaster it outside before you went in?

A. Yes.

Q. Well, the whole of it would take longer than a week, would it not?

A. Hardly.

Q. Was that before the survey or after it, Mr. Logan?

A. Before there was any survey.

Q. There was no survey at that time?

A. No.

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Q. What time are you speaking of now?

A. 1870.

Q. Who made the first survey?

A. I do not know whether it was Sinclair or Johnson.

Q. Did you go to live in your house as soon as you had it finished?

A. Yes.

Q. Where was that house now, Mr. Logan? How far from Barber's was that little log house?

A. North from Barber. It might be 70 or 80 feet.

Q. It might be? There have been surveys and plans made. You are an 80 intelligent man, and you can tell us if it is more than 40 feet.

A. It is more than 40 feet and more than 60 feet.

Q. Now, then, are you sure of that, Mr. Logan?

A. I never measured it. I believe it is more than 60 feet.

Q. The next building that you put up? I suppose you put up no buildings until then?

A. The other buildings were commenced at about the same time.

Q. How long after you put up the first log house before you commenced the second one?

A. It may be a month.

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Q. That would bring it up to about November, somewhere?

A. October.

Q. Where was that building situated? Would it be north, south, east or west of the first building?

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A. Joining on the corner—joining on the north-west corner.

Q. That would be bringing yourself more over towards Barber?

A. Yes.

Q. His Lordship asks you what size that building was.

A. 28 x 88.

Q. Now, you had owned, according to your statement, the Hupé lot some time before that?

A. Yes.

Q. How long before?

A. I think it was in '68—the fall of '68.

Q. And because you owned the Hupé lot you went into possession of this piece of the Common? You say that you owned the Belch lot? 10

A. Yes, partly.

Q. You say that you owned the Belch lot?

A. Yes.

Q. And you went into that partly because of owning the Hupé lot?

A. Exactly.

Q. And you based your right to it upon that?

A. As well as locating it.

Q. Did you think you had any right to the other piece of land because you 20 owned the Hupé lot?

A. Yes; at least I knew the Common was undivided.

Q. And you would have an undivided share?

A. Yes.

Q. Did you ever have anything to do with the appointment of the trustees or the application for the Common holder?

A. No.

Q. Did you ever take any part whatever in regard to the control of the Common?

A. No.

Q. You knew about the trustees being appointed? 30

A. Yes.

Q. When were they appointed?

A. I could not say.

Q. How long after you went into the possession you speak of?

A. It might be two or three years after.

Q. How do you know they were appointed?

A. I heard so.

Q. How did it come to your knowledge?

A. I do not remember whom I heard it from.

Q. Don't you know your employer, Mr. Barber, was one of the trustees? 40

A. No.

Q. Then you say that you went into the little house as soon as you got it finished—you still remained with Barber in his store, I suppose, clerking with him?

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A. Not long.

Q. How long after you went there did you remain with Barber in his store?

A. I may have remained a year.

Q. That is after you moved into house No. 1?

A. Yes.

Q. That is the one 12 x 16?

A. Yes.

Q. You say Sinclair or Johnson made the first survey; can you, now, upon reflection, say which of them made the first survey?

A. I am rather inclined to believe it was Sinclair.

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Q. Sinclair was a good deal about Barber's store at that time, was he not?

A. He occupied the floor over.

Q. How soon did Sinclair go there—after Barber moved in, or after you went into the little house?

A. Not long after

Q. Did he make a survey, then, of the property or the business part of it?

A. I think he made a survey of the Common.

Q. Did he make a plan?

A. I have seen the plan since.

Q. How soon after Sinclair went there did he make the plan?

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A. Not long after.

Q. When you say "not long after," what do you mean? Do you mean by that years or months?

A. Months.

Q. After he moved in over Barber's store?

A. Yes.

Q. You call that about a month, you say?

A. It may be about a month.

Q. Whom did he make the plan for?

A. I think for the Point Douglas holders.

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Q. What holders?

A. Point Douglas holders.

Q. Where was the plan kept after he made it?

A. I do not know.

Q. Now, you remember your evidence the last time upon that, Mr. Logan? Can you now, upon reflection, say if you know where the plan was kept?

A. No.

Q. Can you say whether the plan was kept in Mr. Barber's store or not?

A. No.

Q. You were clerk there?

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A. Yes, I was not alone, there were two clerks there.

Q. You were one there, and you were living in the little house immediately north of Barber's store?

A. Yes; keeping a boarding house.

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Q. Had you not some interest in the survey made by Duncan Sinclair ?

A. Yes.

Q. But you never cared to see the plan that he made ? He made it a month or two after your going there, or after his going there, and you never cared to see it ?

A. I do not remember seeing it.

Q. Now, Mr. Logan, at that time did you pretend to own any part of Lot C ?

A. Building No 2 is on it.

Q. I do not care what is on it Did you at that time, own any part of Lot 10 C ?

A. Yes.

Q. Did you assert it to anybody ?

A. I do not know that I spoke of it to anybody more than living on it.

Q. Did you ever assert your right to any person—Barber, Fonseca or anybody else—and if so, how did you assert your ownership for C ? Was there any other building besides that on C ?

A. It is altogether on C.

Q. Had you ever, up to that time, asserted title or ownership in any way to C ?

A. Yes.

Q. Well, now, in what way had you done so excepting by this little building there ? (I am talking about when the plan was made.) Did you ever speak to the Point holders, or trustees or anybody ?

A. No.

Q. Did you ever assert your title in any way excepting by putting your little building upon it ?

A. No; I did not consult anybody as to going on the premises.

Q. Now, that is the only way ; and you never tried to ascertain whether the plan was for inspection that you might see ?

A. No, there was no survey.

Q. But I am talking about the plan that was made. Did you, to Sinclair, or anybody else, make any reference to your ownership ?

A. Not that I am aware of.

Q. What was the frontage on Main street of C ?

A. Sixty-six feet.

Q. Was any part of the small building you speak of on D ? Now, mark you, I am going to have a survey made in order to see that ?

A. Yes.

Q. There was part of the small log building on D ?

A. Yes.

Q. What afterwards turned out to be D ?

A. Yes.

Q. The building was 13 x 16 ?

A. Yes.

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Q. Sixteen feet fronting on Main street, or away from Main street, or where Main street is?

A. Away from Main street.

Q. How far back?

A. It might be 30 or 40 feet.

Q. How many of the 16 feet would there be on C and how many on D?

A. There would be very few feet on C.

Q. How long after the survey was made by Duncan Sinclair before you saw the plan at all?

A. I think it was when I sold to Freeman.

Q. How long would that be?

A. I do not remember the date. '71, I think.

Q. You did not sell to a man named Patterson before you sold to Freeman?

A. No.

Q. You sold to Freeman first?

A. Yes.

Q. And you saw Duncan Sinclair's plan when you sold to Freeman?

A. No, I think not, I think he said he knew.

Q. The question I asked you was—"How long after Duncan Sinclair made the plan was it before you saw it?"

A. '71.

Q. Then that would be a few months after?

A. May be a year after.

Q. Where did you see it?

A. I think it was at McDonald's.

Q. Neil McDonald's?

A. Yes, I think I saw the plan there. I think that is where I first saw it.

Q. How did you come to see it there?

A. They were interested in the Point Douglas Common, and they were speaking of it and had a draft of it.

Q. Now, you did not see the plan in Barber's store or in Fonseca's house?

No answer.

Q. Now, look at that plan and tell me when you first saw it (showing witness a plan - Exhibit 2).

A. I do not remember ever seeing it before to-day.

Q. You never saw it in Barber's store. It was not lying on the counter in Barber's store while you were there, for weeks together?

A. No, I think not.

Q. In what place did they put this plan to sell the lots by on Point Douglas after the survey was made?

A. I do not know.

Q. You never saw them offered for sale?

A. No, except the part I sold to Freeman.

Q. How did you come to sell to Freeman? Did you see what you were selling him?

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A No, there were pickets put up, he may have seen the plan.

Q Who put up the pickets?

A It must be Sinclair.

Q Now, I understood that Sinclair put pickets up on 66 feet lines; how would the pickets be put up 40 feet?

A It would be on part of the lot.

Q Then you must have put up some pickets to show where the 40 feet were?

A I measured it.

Q But you had no plan?

A No.

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Q Where is Freeman now?

A I do not know.

Q And you put up pickets?

A We stepped it—measured it.

Q Where did you step it from?

A Lot B, well, from Barber's boundary

Q You had never seen the plan but you saw the pickets?

A Yes.

Q How much was Freeman to give you for it?

A \$200, I think.

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Q Now, did you or did you not, during the time you were there know, Mr. Logan, that Barber and Schultz and others were dealing with these very lots that you claim to own?

A I heard they were selling.

Q I am talking about these lots—this C D E and F?

A No.

Q You say that you do not know that the trustees were dealing with C, D E and F?

A No, I was not aware of it.

Q Were you told that on D E and F on the plan other names than your own were written?

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A No.

Q The first sale you made, you say, was to Freeman?

A Yes.

Q Did you ever have a fence built on C D E and F?

A I had a fence on part of C and part of E. That is a fence enclosing the stable.

Q Do you mean a fence around the whole of the stable or only a fence enclosing hay?

A Yes

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Q Was the stable on both these lots?

A I think it was mostly on E.

Q What was the first thing that was ever done in the way of fencing out lines on D E and F?



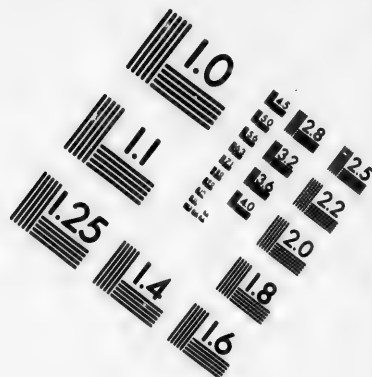
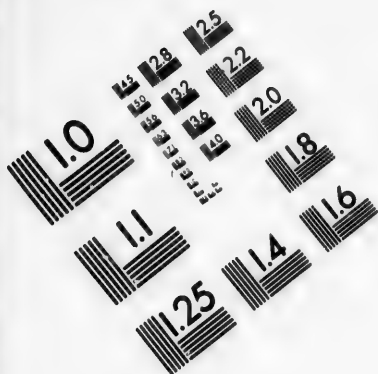
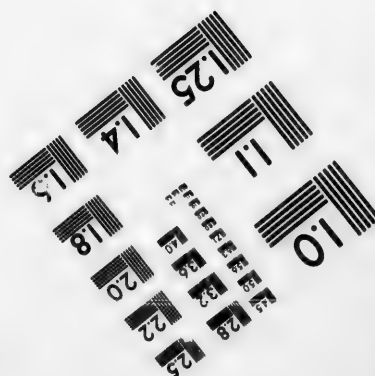
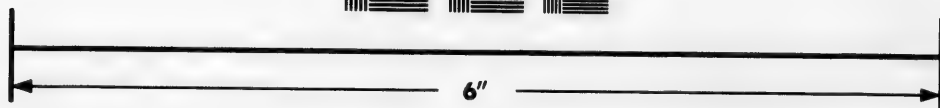
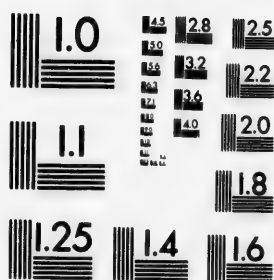


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A. There was no fencing at all. Schultz put up a fence 2 or 3 years ago.

Q. In what year?

A. I think in '88. Not long ago.

Q. Now, do you know that Fonseca was there at the time the fencing was put up and that it was put up by Fonseca and Schultz?

A. I was made to understand that Schultz did it.

Q. Was Fonseca there?

A. He was about.

Q. But you did not see him putting up the fence?

A. No.

Q. Do you know that the fence was put up, Mr. Logan, in 1881?

A. I think it was '88.

Q. And have they kept a fence from that time up to the present?

A. I think the fence is partly pulled down, I see no fence on Main street.

Q. Well, there are buildings on Main street?

A. I did not see any fence on the back of it, I passed through this morning and I see some pickets there.

Q. Pickets where?

A. I think there are some on Austin street.

Q. Buildings, you say, are on Main street?

A. There is no fence on Main street. I think the whole front is covered with buildings.

Q. Did you ever take any action, Mr. Logan, to prevent the trustees getting the whole Common?

A. No.

Q. Did you ever take any action to assist them in getting it?

A. No.

Q. What time were they appointed? You stated before, can you say again now, what year they were appointed?

A. I do not know whether it was '71 or '72.

Q. Well, now, do you know what happened in '76 or '77? That is 6 years after?

A. In what way.

Q. Do you know in 1876 or '77 whether the trustees got it or not?

A. I think I heard about it.

Q. What came to your knowledge then, in regard to the determination of the Government in '77? Do you know if the trustees got the property?

A. I believe so.

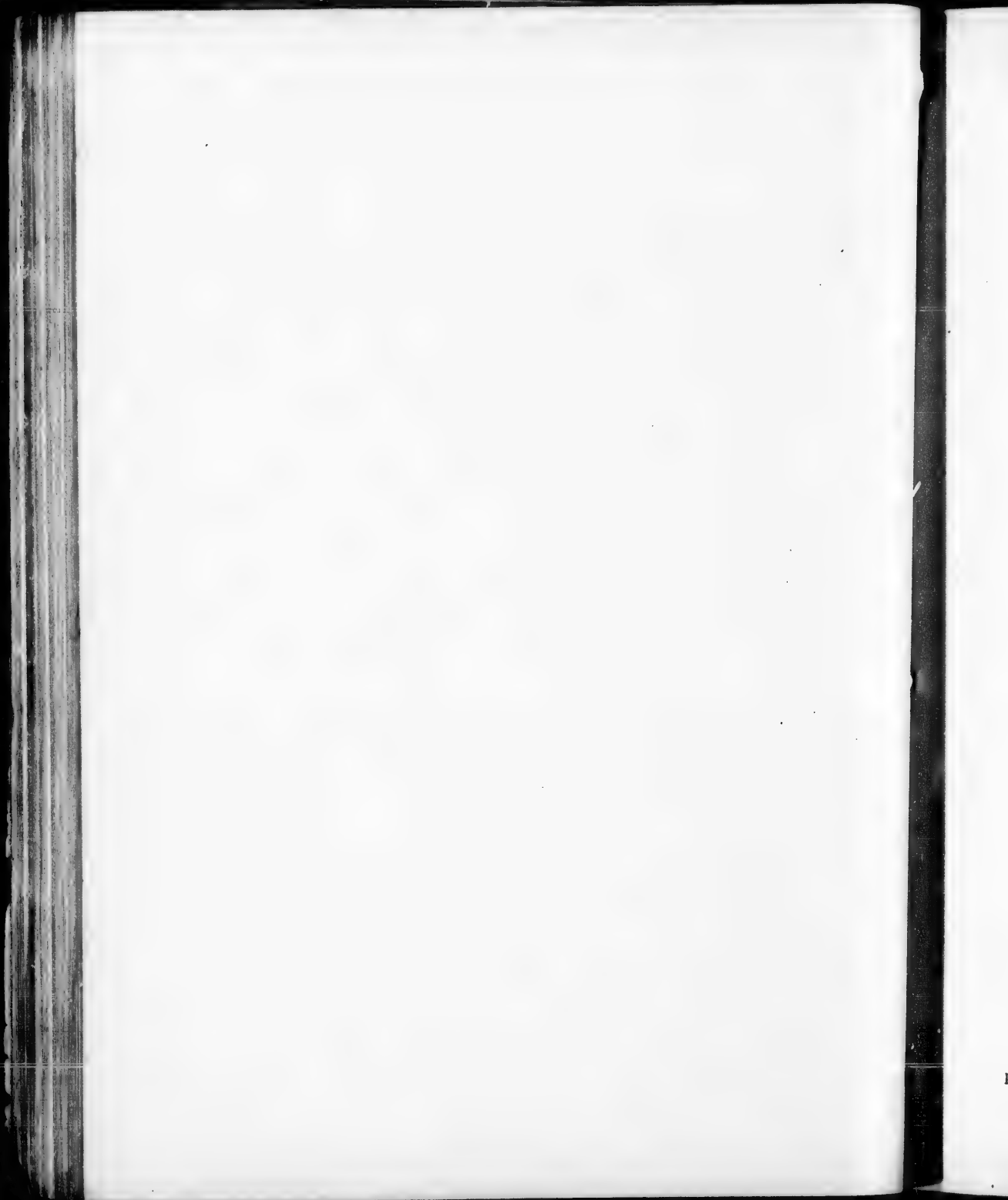
Q. You believe that the trustees got it; got the whole Common did they?

A. I understand that the Government granted the patent to those that 40 applied.

Q. I am talking about the trustees?

A. I think the trustees were set aside. I think the Point Douglas Common trustees were set aside.

Q. And what then?



A. And that the Government granted the patents to other applicants giving them acre for acre.

Q. Did they ever give you acre for acre for the Hupé lot you talk of?

A. That was in dispute.

Q. But at any rate, you never got the acre for acre?

A. I got some.

Q. Did you get it from the Government?

A. No.

Q. You knew, in '77, you say, that the trustees were set aside, and that the Point owners got acre for acre?

A. Yes.

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Q. Well, now, after they got the acre for acre, what became of the men who bought from the trustees of the land?

A. I think they owned them.

Q. Yes, the Government ratified all their patents; all those who bought from the trustees?

A. Yes.

Q. Yes, that is a fact; you knew that?

A. I am generally aware of the proceedings up to now.

Q. That took place about the Common?

A. Yes.

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Q. And are you aware also that when the trustees were set aside, and the acre for acre given, that John McDonald applied for ten chains under the Manitoba Act?

A. Yes; he located there in '69.

Q. You are aware of that?

A. Yes; saw the building going up. He was an owner on Point Douglas Parish, I think.

Q. Claimed to the Common.

A. Yes, part of the Common.

Q. How many chains was he in possession of?

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A. I could not say.

Q. When did he make his application?

A. I do not know.

Q. Was it after the acre for acre was divided in '77?

A. I have heard since it was before; I was not aware of it then.

Q. How soon after the determination of the Government in 1877 did you become aware of John McDonald making application under the Manitoba Act?

A. It must be—well, I could not say.

Q. As near as you can?

A. It may be one year or two years.

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Q. Because you say he was in possession in 1869?

A. I think that was the ground.

Q. Do you know about any John Sutherland, whether he was in possession of a part?

A. No.

Q. You do not know?

A. I know that he was not.

Q. Do you know that he made an application for a patent under the Manitoba Act?

No answer.

Q. How soon after the 10th May, 1877, were you aware that Sutherland made an application for a patent under the Manitoba Act?

A. Two or three years ago—'82 or '83.

Q. Do you know that he got the patent?

A. I have heard that he did.

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Q. Can you say whether Dr. Schultz made an application?

A. I heard so.

Q. Do you know whether he, or those for whom he applied, were in possession so as to make an application under the Manitoba Act?

A. I think not; I think he was not.

Q. How did he then come to make an application under the Manitoba Act?

A. I do not know.

Q. And is McTavish the only man that was in possession so as to make application under the Manitoba Act?

A. I saw the building going up.

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Q. Do you know any others?

A. E. L. Barber.

Q. Do you know anyone else?

A. Myself

Q. Do you know anyone else?

A. Fonseca.

Q. These were four that you know were in actual possession of parts of the Common before the 15th July, 1870?

A. Yes.

Q. Now, did you know, Mr. Logan, that after the 10th May, 1877, that persons in actual possession of parts of the Common could make application under the Manitoba Act?

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A. I found out that later.

Q. Did you know it then?

A. Not then.

Q. How do you know McTavish did it then?

A. I found it out later.

Q. You found out what later about McTavish?

A. That he had applied for a patent.

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Q. Do you know, was that after the acre for acre was passed that you knew McTavish had made the application under the Manitoba Act?

A. By hearsay.

Q. Well, how long after the acre for acre did you become aware of McTavish's application, by hearsay?

A. It is about the same time as the Fonseca patent came out.

November 12th, 1886.

Cross-examination of William Logan, continued.

By Mr. Glass :

Q. You had been living in the back of Barber's old store before moving up to the new store ?

A. Yes.

Q. Did you come up to the new place at the request of Barber ?

A. I moved on his business partly.

Q. Did you go up there at the request of Barber, to be convenient to him in his store ?

A. I think not. 10

Q. Look at that plan (showing witness a plan) and say if you can point out the lots upon it to which you refer ?

Witness points out lots C, D, E and F in block 14, Sinclair map.

Q. When did you first see a fac simile of that plan, or any one copy of Sinclair's plan—when did you first see Sinclair's plan ?

A. I do not remember the date. Sometimes I had occasion to look.

Q. Tell us when you first saw that. When did you first see Sinclair's plan ?

A. I think it was at McDonald's ; the draft they had was a draft or sketch of it.

Q. Sinclair lived with you, did he not ? 20

A. No.

Q. Did he live over Barber's store ?

A. Yes.

Q. And you lived a little north of that ?

A. Yes

Q. Now, can you tell by Sinclair's residence there when you saw it ?

A. It may have been a year afterwards.

Q. A year after the making of the plan ?

A. Yes ; one Mr. Mead had a copy of it, a draft or something. 30

Q. Now, who was Mr. Mead ?

A. He was a printer by trade.

Q. What connection had he with this estate ?

A. I think he was executor for McDonald's estate.

Q. Was Neil McDonald living or dead then ?

A. Dead.

Q. Were you on intimate terms of friendship with Sinclair ?

A. Not very intimate. He was a stranger, just come to the country ; I was simply introduced to him ?

Q. Did he come straight, the next day after his arrival here, to Barber's— 40 as far as you know ?

A. I do not think I was at home when he arrived.

Q. Now, do you know as a matter of fact that the first work he did in Manitoba was on that survey?

A. I could not say.

Q. How long after Sinclair's arrival in the country before you knew him?

A. I do not think it was long after.

Q. How long? within a week or ten days?—tell us.

A. It may be a month or more, I think it was more like winter, or in the fall I think?

Q. Now, do you know that he arrived in Manitoba in September, 1870?

A. No, I do not.

Q. You think you knew him first in the fall of '70?

A. Yes.

Q. Where did he do his work, in the way of making his plan or anything of that sort?

A. I do not know.

Q. Did you ever go up-stairs when you were in Barber's store?

A. Hardly ever.

Q. Did you see Sinclair working on the plan up-stairs when he was over Barber's store?

A. No.

Q. You did not?—You swear to that now? Did you see Sinclair's store?

A. Sometimes.

Q. Did you see Mr. Fonseca in there with him?

A. I do not remember.

Q. Do not remember ever seeing Fonseca there?

A. Yes.

Q. With Sinclair?

A. I did not say with Sinclair.

Q. Was not Barber's the headquarters for all the people round there to meet?

A. I do not know.

Q. Now, if it is a matter of fact that the very first meeting of the trustees when all the business was done, was in Barber's store; and you were a clerk there,—you know nothing about it?

A. It must have been when I was out.

Q. You never saw any of the trustees then?

A. Not in Barber's store.

Q. Did Mr. Sinclair afterwards make your house his home, when he was in Winnipeg?

A. Not very long ago.

Q. Duncan Sinclair, did he make your house his home when he came to 40 Winnipeg?

A. He stopped there about a week or two, three years ago—he was boarding there.

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Q. He knew all about this then ; and you too, did you not—You knew all about this particular period when Duncan was giving his evidence in the last case ?

A. Yes.

Q. You knew all about Duncan making this plan when you were giving evidence in Mercer and Fonseca ?

A. Yes.

Q. But you cannot now bring it to your memory ?

A. I am pretty well acquainted with the plan itself.

Q. Were you acquainted then ?

A. I must have known something.

Q. Did you say then that your name was written on D. E. and F. on the plan ? Now never mind looking at Mr. Patterson ;—Did you say then that your name was written on D. E. and F. on that plan ?

A. I do not remember.

Q. Did you say then that your name was written on any lots ?

A. I might have said so.

Q. If Duncan Sinclair stated that your name was printed across the lots, was that true or untrue ?

A. I could not say.

Q. As the plan was progressing, did you see a draft of it in Barber's store, and approve of it ?

A. No, my business in Barber's was a traveller's, and I was principally outside.

Q. Clerks usually stay outside the store, do they ?

A. I was trading.

Q. Do you call it trading outside the store ?

A. Principally.

Q. Who kept his books ?

A. I think one Major Robertson.

Q. Now, how many days in the course of a year were you out of that store ?

A. May be half the time out of the store, or more.

Q. I suppose you desire to tell the truth here, Mr. Logan ?

A. That is what I desire.

Q. You told my learned friend that you sold a piece of this land—40 feet—to whom ?

A. To Freeman.

Q. When did that take place ?

A. I do not remember the date.

Q. You sold another place. You sold, you state, 40 feet to Sutherland—part of C to Freeman ?

A. Yes, and a part of F.

Q. That would be as early as when ? What year ?

A. I cannot say, perhaps it may be '72.

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Q. '71 you thought yesterday?

A. I am not positive, I have no notes of it.

Q. You sold another piece—92 feet on Main St., extending to Fonseca—to Mercer?

A. Yes.

Q. You sold a piece to McDonald?

A. Yes.

Q. Now when did you sell to McDonald? You state Mercer was in '70—That was F. C. Mercer?

A. Some time after.

Q. How long after?

A. Not very long, it might be a year.

Q. What part did you sell to McDonald?

A. I think it occupies part of C. and F

Q. On Austin St?

A. On Austin St.

Q. And then you sold the balance to Schultz?

A. Yes.

Q. Now this is your affidavit made on the 29th day of April, 1882. "In the matter of the application of William Logan, of the city of Winnipeg, for 20 the issue to him of letters patent for the surveyed portion of what is known as lot No. 35, Dominion Government Survey, or Lot 24 of the Hudson Bay Company's survey, in the parish of St. John, in the County of Selkirk and Province of Manitoba, under the Act, 32 Vic., Cap. 3, Sec. 32, and amendments thereof, etc., etc." This is your application under the Manitoba Act.—What explanation have you to make in reference to the dates, '63 and '68?

A. '63 is one date and '68 is another date.

Q. Do you wish to make any explanations?

A. I did occupy part of it in 1863.

Q. Part of what?

A. Point Douglas Common.

Q. Now, you make a declaration saying that you were the owner of that property in 1882. When you made that declaration it was not true, was it that you were the owner of that property in '82?

A. That was my belief.

Q. How could you believe it, if you had sold it to all these people?

A. Well, getting a patent—

Q. Oh never mind getting the patent—

A. It was intended to satisfy the parties I had sold it to.

Q. And you swore that you were the owner of the property after you had 40 sold it to them?

A. For getting a patent.

Q. At the time you made that declaration, you were not the owner of the land, were you?

A. Not the whole of it.

Q. Now, do you want to make any explanation ?

A. I applied for the patent so as to secure the title for them.

Q. You swore that you were the owner in order to get the title for other parties ?

A. Yes

Q. That was the way you came to make your declaration that year ?

A. Yes.

Q. And you are an educated man ?

A. Some.

Q. And you understand the importance of making a declaration of that 10 sort—that you were the owner of a property when you were not ? If your declaration is untrue you understand the effect of it ?

A. I think so. I was asked to do so by the parties to whom I sold.

By Mr. Tupper :

Q. What year did you sell to Dr. Schultz ?

A. The first attempt to sell was in 1873.

Q. What do you mean by the first attempt to sell ?

A. There was a deed made to Schultz and I could not get my price, and I had to take action to set it aside.

Q. I ask when you sold to Schultz. I ask when you actually sold.

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A. I think two years ago we concluded.

Q. That would be in 1884 ?

A. I think in '84 ; I think so.

Q. Well, now, I suppose at the time the transfer was made, the great question was the question of title, was it not ? The question that agitated all men's minds in 1872 was the question of title to their lands ?

A. Principally.

Q. That was the question to which all men's minds were directed ?

A. I think so.

Q. And you at that time, claimed lots of land which were afterwards 30 described in a plan as lots C, D, E and F ?

A. Yes.

Q. Now, what steps did you take to have your claim acknowledged by the Government, or by anyone else ?

A. I made an application in 1882.

Q. I am asking what steps you took in 1870 or '71 to have your claim acknowledged by the Government or anybody else ?

A. I took no steps—no more than living on it and working it.

Q. Now, you took no further steps you say, than living on it and working it ?

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A. None to my knowledge.

Q. When did you commence to live on it ?

A. I moved my family in about September ; I know that my men were working in it about September.

Q. How long were you living on it from September, '70 ?

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A. Two years ago.

Q. Continuously—in the same house?

A. Yes.

Q. That would be up to 1884?

A. Yes.

Q. Then what steps did you take in 1873 to have your title acknowledged by the Government or by anybody else?

A. I am not aware of any.

Q. What steps did you take in 1874?

A. I am not aware of any.

Q. What steps did you take in '75?

A. Just about the same I think.

Q. You took no steps?

A. No.

Q. What steps did you take in 1876?

A. I did not take any.

Q. In '77?

A. None.

Q. In '78?

A. None.

Q. In '79?

A. No.

Q. In '80?

A. None.

Q. In '81?

A. None.

Q. In '82?

A. The time I made the application.

Q. You say you were aware that Duncan Sinclair had made a plan of the lots, a portion of which you claim?

A. I became aware of the fact.

A. You were aware of that, you say, about a year after it was made?

A. Yes.

Q. It was made in December, '70, and that would be sometime in the year '71?

A. About.

Q. When you became aware of it?

A. I became aware of it by seeing the plan.

Q. Did you know before that date that such a survey had been made? Did you see the surveyor on the ground?

A. No.

By His Lordship:

Q. You mean the survey had been made before you saw the plan?

A. Yes.

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By Mr. Tupper :

Q. Did you see anyone surveying lots C, D, E and F ?

A. I did not.

Q. Was your attention called ? I think you stated you saw the stakes ?

A. Yes.

Q. When did you first see the stakes ?

A. December, 1871.

Q. Did you ever speak to Duncan Sinclair about the survey, prior to December, '71, when you saw the plan ?

A. I think not.

Q. You never discussed the matter with him at all ?

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A. I think not. I do not remember.

Q. You felt no interest whatever in the lots which you claimed, so far as that plan was concerned ?

A. No

Q. Did you know for whom that plan was being made ?

A. I became aware that it was for the Point Douglas Common holders.

Q. Well, you claimed to be a Point Douglas Common holder, did you not ?

A. Yes.

Q. And yet you took no interest, you say, in the lots which you claimed as 20 your own, so far as that plan was concerned ?

A. I was satisfied by not being disturbed.

Q. But what steps did you take to prevent yourself being disturbed ?

A. I did not require any.

Q. Explain why ?

A. I was away in the fall of '70, taking the census.

Q. How long were you away ?

A. It must have been two months.

Q. Whereabouts were you ?

A. From St. Vincent to Provencher.

Q. And what time did you come back ?

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A. It must have been in December.

Q. I see ; in December. And you had no conversation whatever with anyone concerning this plan ?

A. No.

Q. You took no interest in it whatever ?

A. None

Q. Now, you attended a meeting of the Point holders, did you not, called for the purpose of considering the thing ?

A. I think not.

Q. Did you or did you not ?

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A. I do not remember.

Q. But you may have been there ?

A. I rather think not.

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Q. Is your memory clear upon the point as to whether you were there or not?

A. I think I was not.

Q. Well, then, if one of those who were there say so, you could not say he was wrong?

A. I do not think I attended any meeting.

Q. But you won't swear that you were not. Remember, Mr. Logan, this is a matter that deeply interested you—the question of the title to your land. You have no memory as to whether you were there or whether you were not?

A. I do not remember.

Q. You say you staked out the land which is now described as C, D, E and F in 1868?

A. Yes; that composed part of what I did stake out.

Q. What did you say?

A. That composed part of what I had staked out.

Q. How much did you stake out—I think you call it staking up—in '68?

A. I did not measure it. It may have been two acres or three acres; it was not measured.

Q. Were other parties at that time going on and staking out land?

Q. Did what you staked out include Barber's land?

A. I had nothing to do with that.

Q. Then your two acres must have extended in another direction?

A. Yes.

Q. You say that you staked out more than is now described as lots C, D, E and F?

A. Yes.

Q. Then you had a claim to lots more than C, D, E and F?

A. I should have stuck to my claim.

Q. When you saw the plan in December, 1871, and you found that they did not give you all the land that you claimed, why did you not make any objection?

A. I was satisfied by owning the four lots.

Q. But, if you were entitled to five lots why should you be satisfied with four?

No answer.

Q. Did you say that the fact that you had gone on and staked out gave you a claim to it?

A. Yes, I supposed it did.

Q. Very well, then, if you were entitled to any you were entitled to all?

A. I did not improve on the balance of it.

Q. But what improvements had you made in December, 1871, on C, D, E and F?

A. Building and plowing and general.

Q. I am asking about December, 1871, now in '71 or '72?

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A. I had a little garden between the buildings.

Q. You told us yesterday that you based your claim upon the fact that you had staked out in December, 1868, a certain quantity of land?

A. As well as that I was an owner.

Q. I say to you, why did you not claim the balance of the land which you had not been allowed, when you saw the plan in December, '76?

A. I understood that the Government were going to deal with the land, and that we would get some lots distributed among the holders. That was what we had been told

Q. What holders?

A. Point Douglas holders.

Q. From whom did you understand that?

A. It was general rumor.

Q. Did you meet all the Point Douglas Common holders and discuss the question?

A. No.

Q. With any particular one did you discuss it?

A. No.

Q. You know, Mr. Logan, at that time Winnipeg was a small place; there were a very few people in the city, and we want a little more than vague general rumor. This understanding is not evidence. If you had a claim we want to see upon what you based it. We do not want to know that you think this and that; we want evidence. However, that is the only reason you can give for not asserting your right to the land which you had staked out?

A. That is the only reason.

Q. Well, now, did you go on that Common by virtue of what you claim was the ownership of the Hupé lot, or did you go on there as a squatter?

A. As both.

Q. Did you own the Hupé lot at that time?

A. Yes.

Q. You had not sold it?

A. No.

Q. When did you sell it?

A. In '71.

Q. To whom?

A. One McDonald.

Q. And was your claim subsequently acknowledged to the Hupé lot, or was it found that you had no claim whatever to it?

A. He was satisfied with the lot.

Q. There was an investigation, was there not?

A. Something.

Q. How was it then found?

A. It was found that the patent should have been issued to McDonald for having purchased from me.

Q. Were you called as a witness in that case?

A. Yes

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Q. And you state here that the finding was that you were entitled to the Hupé lot?

A. I would not swear about that.

Q. Well, now, come, be sure about that. Was it found—You were present when the trial took place?

A. That was before the commissioner.

Q. And you were a witness?

A. Yes.

Q. And I want to know whether you will state on oath that the finding was that you were entitled to the Hupé lot?

A. The commissioner did not give his answer then.

Q. You heard what his finding was?

A. I heard that his finding was that the patent should issue to Henry McDonald.

Q. Because you had given him a valid title?

A. Because I had sold.

Q. What other people were squatting on the Common at that time?

A. There was no squatting then.

Q. There was no other squatter but you?

A. There was no squatting on the Common in '71.

Q. But you were there? In '71?

A. I did not say.

Q. You said you were there in '71. Is that so? If not, correct it now?

A. If I understood it the question was, "Was there any squatting in '71?" and I say "No."

Q. You had gone on in '70; you were there?

A. Yes.

Q. There were others on who had gone on before '71?

A. Yes.

Q. Well, now, you say you made improvements on this lot C, D, E and F, 80 what plowing did you do?

A. The plowing was done on what is Austin street now.

Witness continuing—The plowing was not done on C D E or F, except around it.

Q. I was asking you whether the plowing was done on C D E or F, or any part of it?

A. I think it touched on F.

Q. Will you swear it touched on F.

A. I would not say so now unless I saw the plan.

Q. Speaking of plowing, was this plowing for the sake of putting in a crop?

A. For a garden.

Q. Whereabouts was this garden?

A. After plowing it we never used it as a garden.

Q. You never put in a crop?

A. No, not on that piece.

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Q. Where did you put in a crop ?

A. I put in some vegetables between the houses.

Q. Between what houses ?

A. Between the first and second house, in the corner.

Q. That would be on part of C and D ?

A. Yes.

Q. When did you put in these vegetables ?

A. I think in the spring of '71, '71 and '72.

Q. How much ground did these vegetables cover ?

A. About, it might be, 20 feet square ; perhaps larger.

Q. About 20 feet square, just in the corner between the buildings ?

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A. Yes.

Q. Well now, what other improvements ? You say you put in these vegetables in this lot 20 feet square in '71 and '72 ?

A. Yes.

Q. But I ask you what other improvements in the way of cultivation you did ?

A. None other.

Q. Why was it you made this plowing that you never used. For what object did you make that plowing ?

A. That was part of the land that I had staked out in 1868.

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Q. For what purpose did you make that plowing ?

A. I intended to cultivate it.

Q. Then you did not plow in a circle so as to enclose any lot ?

A. Not at that time

Q. What was the extent of that block you plowed ?

A. Quarter of an acre.

Q. Now, you say that the only improvements so far as cultivation was concerned, was a plot of land 20 feet square, on which you planted vegetables for two years ; in 1871 and 1872, and the quarter of an acre on which you so plowed on what is now Austin street.

A. I could tell if I was on the ground better.

Q. Now, how did you stake this land in 1868 ?

A. It was prairie land.

Q. How did you stake it up ?

A. I put up stakes on the highway from the corner of a ridge and run back a distance east, and then north, and then south.

Q. Then how many stakes did you put up as you went along ?

A. It might have been five.

Q. What did you put up five stakes for ?

A. I was trying to make the line straight

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Q. You mean you put up five stakes all the way round ?

A. There were four corners and I used one in the middle to make it straight.

Q. Now, why did you never put in a crop in that 20 feet ?

A. The survey took place and after the survey took place I confined myself to the four lots.

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Q. You gave up the lots then, which you had staked out and plowed, on account of this survey?

A. Yes, that is it.

Q. Now, what was the value of this first house you put up?

Mr. Glass says: "I wish it noted that this does not apply to my client Fonseca."

Mr. Tupper, continuing—

Q. I mean this log cabin?

A. It might be \$80 to \$100.

Q. Yes, how do you arrive at this sum?

A. I think the wood for the building cost from \$20 to \$30; then I had to draw it about 16 miles and put it up: then the other materials. 10

Q. It cost you about \$80?

A. About that.

Q. You swear to that?

A. I would not swear to the exact amount.

Q. Did you bring the logs down the river or draw them from inland some place?

A. Drew them on a cart with oxen.

Q. You think it cost you about \$40?

A. About that, it may have cost me more. 20

Q. Now, you knew that people all around you were doing all they could to get their patents for their land did you not?

A. Their business was not mine. I have heard that they were getting a move to get their patents.

Q. You knew it was a subject being constantly discussed in Winnipeg?

A. Not just at that time.

Q. But you knew, between the years 1870 and '82, that it was a subject discussed here from day to day?

A. Yes. 30

Q. Well, now, why did you not make any application to the Government to grant you a title to your land?

A. Having based my ground of patent on Point Douglas and sold the Hupé lot to McDonald, it threw me out of making application.

Q. So you had no claim on that account?

A. No.

Q. Well, what is your other reason?

A. I thought the Government would treat with the Point Douglas holders and give them undivided rights.

Q. And therefore that you would have no claim at all?

A. So that I would come in. 40

Q. You say you sold the Hupé lot?

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A. I reserved the right of Common. I sold the lot but reserved the Common right.

Q. Was there a deed?

A. Yes.

Q. In which you reserved the right of Common expressly?

A. Yes, expressly.

Q. Well, then, you had no communication; although you were claiming as a Point Douglas lot holder, you had no communication whatever with the trustees as to the action of the Government?

A. No.

Q. You had no communication from 1870 until 1882 with the trustees in reference to this Common? 10

A. No.

Q. Although you claimed as one of them?

A. Yes.

Q. Now, you stated in your examination in chief that you heard that your claim to lots C, D, E and F was disputed in 1878. Why did you take no steps, then, to bring your claim before the Government?

A. I was waiting for the decision of this commission—the commission that sat on lot 24 Point Douglas.

Q. But you have already said that you reserved your right to the Common, so that the decision on lot 24 would have no effect whatever to your right? 20

A. It would depend upon whether the patent were issued.

Q. You said you had reserved, by your deed, the right of Common?

A. Exactly.

Q. Therefore, your right to the Common would be altogether independent of 24?

A. It was dependent on the patent.

Q. How was it dependent on the patent, if you reserved the Common? Now, remember what you stated a moment before. You swore that in the 30 deed you expressly reserved all your rights to the Common?

A. I did.

Q. Apparently, by giving the patent on lot 24 the Government would grant a right of Common to the patentee; but you say you reserved your right of Common in the sale?

A. That was nothing to do with the patent.

Q. I see; then if the Government had issued the patent to McDonald, you would have been all right; but the patent was issued to Schultz instead?

A. Yes.

Q. Now, you say you did not move; although you knew your title was disputed, you did not move hand or foot in the matter? 40

A. No.

Q. And you knew of the issue of the patent to Fonseca in 1879?

A. I think about that date.

Q. Very well, why did you not bring your claim before the Government in 1879?

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A. It was on account of the dispute that was pending between Schultz and I on the right to 24.

Q. When was that decided ?

A. Oh, lately ; about two year ago.

Q. Did the patent for the Hupé lot issue to Schultz ?

A. Yes.

Q. And the Hupé lot is what you call 24, is it ?

A. Yes.

Re-examination by Mr. Patterson :

Q. You state you sold the Hupé lot to McDonald ?

A. Yes.

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Q. And that if McDonald had got the patent for it you would have been all right ?

A. Yes.

Q. When did McDonald sell the Hupé lot to Schultz ?

A. I do not know exactly when.

Q. Did McDonald sell to Schultz ?

A. Yes ; so I believe ; I did not see the deed of transfer.

Q. Did you say Schultz got the patent for the Hupé lot ?

A. I do not know.

Q. But you say it was pending on the investigation in the Hupé lot ? It was waiting for that that kept you waiting ?

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A. Yes.

Q. How did that affect you—the decision as to the Hupé lot ?

A. It was depriving me of the common right to lot 24.

Q. How did it apply to your right as an occupant of C, D, E and F, on Point Douglas Common ?

No answer.

Q. What was the first plowing that you did there and when ?

A. In the fall of '69.

Q. What was the plowing that you did then ?

A. It was simply a furrow run around the land.

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Q. What was the extent of the plowing ?

A. Just one furrow. Oh, it covered more ground than I staked out in '68 ; there was a general scramble in '68 ; there were ten or twelve plows on the same land.

Q. And then you plowed across what each other had plowed out ?

A. Just about that ; there were others on the place taking possession by plowing.

Q. What did it include ?

A. It included these lots C, D, E and F.

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Q. Had any person else enclosed any portion of what you afterwards plowed around ? Had any one plowed around any portion before that ?

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A. I think I jumped Bannatyne's claim that spring; he told me he had plowed around too, and I saw some marks; and McDonald, a little north of that, he did his plowing then.

Q. Would Bannatyne's include this C, D, E and F?

A. I do not know what it covered.

Q. You must know what you covered when you jumped Bannatyne's claim. Did it embrace C, D, E and F?

A. I think it particularly embraced Sutherland and Barber's claim.

Q. Did Bannatyne's plowing cover C, D, E and F or any part of it?

A. I simply know from what Bannatyne said, that his plowing had 10 covered what he had taken up.

Q. Did you see the marks of Bannatyne's plowing before you plowed?

A. The marks that I saw of Bannatyne's plowing were near Fonseca's residence.

Q. Were they near your claim or any portion of your claim?

A. No; no marks; they were taking over 100 acres apiece

Q. Who were?

A. The squatters; there was McDonald, Bannatyne, Lennon, McDonald, and myself.

Q. Give us the names now of those who took possession?

A. I do not think any of them remained but McDonald.

Q. It does not make any difference whether they remain.

A. McDonald, Lennon, McDonald, Scott and myself. This is about the meaning of it, my lord, that there was a general scramble and nobody knew who was first.

Q. Well, you have stated that you saw some marks of plowing near Fonseca's house, and you state you jumped Bannatyne's claim?

A. He told me so.

Q. Then you do not say that you jumped Bannatyne's claim, from anything you saw, but only from what he told you?

A. That is all; they were the first on the ground—on the Point Douglas Common, that is. We were reaping at the time there was squatting on the place.

Q. Reaping what?

A. The harvest. I unhitched the horses out of the reaper and hitched them to the plow.

Q. The grain that you were reaping was somewhere else?

A. Yes; on other ground.

Q. Well, what I want to get at is this; Were there any other marks of any person plowing when you plowed on the land that you first plowed? Did you 40 interfere or cut across the furrows of anybody else so far as you can see?

A. We followed some and crossed some; I was plowing and ex-Mayor Logan was driving the horses.

Q. Now after you plowed around these lots, did anyone else take possession of the lots that you had plowed around—take or keep possession?

A. Part of it.

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Q. What part?

A. To the rear.

Q. To the rear of what?

A. Of lots C, D, E and F, and to the north

Q. Did anyone take possession of any part of C, D, E and F?

A. Not that I am aware of.

Q. Which way do you call to the rear?

A. East

Q. You say generally they obtained this possession by plowing. Is that so?

A. Only McDonald as far as I know remained.

Q. McDonald, you say, stuck to what he plowed?

A. Yes; none of the others have so far as I know.

Q. Did you abandon your plowing - what you plowed around?

A. I went on plowing the following spring.

Q. Now, was there any other person except yourself and those claiming through you ever in possession of any portion of C, D, E and F?

A. Not that I am aware of.

Q. Up to what time?

A. Up to the time we made the sales.

Q. I refer not only to yourself, but to those claiming through you. When 20 was the first time that anyone went into possession or use of any portion of this land, who did not claim through you?

A. I am not aware of any.

Q. Do you know what lands Mr. Fonseca was in possession of at the time of the transfer from the 15th July, 1870?

Objected to by Mr. Glass.

Question allowed.

Q. Repeated.

A. Where he was residing?

Q. Where was that. Was it anywhere near C, D, E or F?

A. Along the eastern limit of Point Douglas Common.

Q. I want to know what land Fonseca was in possession of, and whether the land Fonseca was in possession of at the time of the transfer extends to any portion of C, D, E and F?

Mr. Glass objects.

Question allowed.

Q. Repeated.

A. I think not.

Q. You say you think not. Have you any doubt about it?

A. No.

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Q. You were on the ground, living there, in 1870 ?

A. Yes.

Q. Did you, or did you not, at the time of the transfer, live in the neighborhood of this property ?

A. Yes.

Q. And if he had been in possession of any portion of that property at that time you would have observed it ?

A. I would.

Q. When was Barber's store built on lot B ?

A. It was commenced in the fall of '69.

Q. When was it occupied as a store ?

A. '70.

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Q. About what time in '70.

A. I think about September.

Q. You had occasion to pass along C, D, E and F, and about the neighborhood in the spring and summer of 1870 frequently, to see whether any one was taking possession of it ?

A. I was.

Q. You said you never asked the trustees for a title ?

A. No.

Q. Did anyone ever object to your possession there ?

A. No.

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Q. Did you recognize the trustees as having any right to the property ?

A. No.

WILLIAM VINCENT, being duly sworn, testified as follows :—

Direct examination by Mr. Patterson :

Q. How long have you lived in this country Mr. Vincent ?

A. Since the year '41.

Q. How long have you known William Logan ?

A. Twenty-five or thirty years.

Q. Do you know where William Logan lived until three or four years ago ?

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A. For some years up to '83 or '84, he used to live, when I first knew him, with his father. I knew him very well.

Q. Do you know where he lived for some years recently, up to '83 or '84 ?

A. In Point Douglas on the east side of the Main road.

Q. Can you describe it as near any street, or near the corner of any street ?

A. No, I am not well acquainted. It was on this side of the railway—100 to 150 yards this side of the railway.

Q. You do not know the name of the street running near ?

A. No.

Q. There is another street cornering Main street ?

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A. Yes, I know there is a street there.

Q. Can you show us on the plan there (showing witness plan) on which side of Main street ?

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A. On the south side of the railway, you know.

Q. On which side of the main highway?

A. On the east.

Q. Can you tell us when he first lived there?

A. I could not tell exactly when he first lived there, but I could tell pretty near. The only thing that I have to go by is: we had a little girl born in the house the first year I was in, and the little girl is about 15 years of age, I think, last March. I am not positive, but I think it was in March she was born. Last year I was taking up the census for the school there, and I found out the girl was fifteen years old. The parents told me the girl was fifteen years of age in 10 March; I understood it was March past.

Q. Who told you that?

A. The father of the girl. I could not tell the age of the girl; the register would find it out.

Q. Just give us what you remember yourself. You saw Mr. Logan living at that house at a very early time?

A. Yes.

Q. Do you know that the girl you saw last spring was the same girl that you say was born at the time you were there?

Mr. Glass objects to this method of proving the age of the child.

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Objection sustained.

Q. You remember the circumstance of a child being born in the house?

A. Yes.

Q. Are you any relation to the family?

A. A second cousin to the wife.

Q. Were you intimate as friends, visiting each other, and so forth?

A. We used to visit each other; we lived pretty near one another.

Q. Can you tell us what year Logan went into that house?

A. I could not tell you exactly the time, it is so long ago; and that is the only thing I remember on account of the child being born in it; they went into 80 the house that fall—the fall before the child was born; I do not know what time in the fall.

Q. What is the child's name?

A. Adelaide.

Q. You remember seeing the house going up, do you?

A. I do remember the house going up, but I could not tell what time.

Q. Do you remember seeing it go up?

A. Yes.

Q. Did you visit very frequently?

A. Yes.

Q. Where did you live at that time?

A. Down St. Paul Priors.

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Q. What other improvements were going on at the time that the house was being put up?

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- A. I could not tell exactly; I am not certain.
 Q. Do you remember any?
 A. I could not say.
 Q. Do you remember any that were put up shortly after?
 A. There was a store went up right alongside of this house of Mr. Logan's.
 Q. Whose store was that?
 A. Barber's store; but I could not say whether it was the same year or not.
 Q. Was there any other building put up shortly after that or before it?
 A. Mr. Fonseca put up a building on the west side of the road.
 Q. When did you put that up, before or after Logan's house was put up? 19
 A. I fancy it was after; I am not certain; I know it was not finished the first winter it was put up; I cannot say whether it was '70 or '71 it was put up; it was not finished the first winter.
 Q. Could you say whether it was in '69?
 A. I do not think it was in '69.
 Q. Which do you think was put up first, Logan's house or the store?
 A. I fancy the house was put up first.

Cross-examination by Mr. Tupper.

- Q. How many children has Mr. Logan?
 A. Seven.
 Q. What are there names? 20
 A. I could not tell you them all. There is George, the eldest; Robert the next.
 Q. George, the eldest, where was he born?
 A. George, I could not tell where he was born.
 Q. Robert, the next?
 A. He was born in St. Paul—I fancy so—I could not swear—I was god-father to the child and I was living in St. Paul's.
 Q. Who is the next child?
 A. Annie.
 Q. And where was she born? 30
 A. I fancy she was born when he was keeping store here at Barber's on Point Douglas, but I could not say exactly.
 Q. Who is the next?
 A. Adelaide is the next.
 Q. And then the next?
 A. Well, he lost some.
 Q. I mean of the living?
 A. The next one was the little one; I cannot tell you exactly now; there are three little ones anyway.
 Q. You do not know where they were born? 40
 A. No, I do not; they were probably born where he is now at present; the rest of them were born at Point Douglas.

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WILLIAM LOGAN, recalled :

By Mr. Patterson : Q. What was the date of the birth of your daughter Adelaide ?

A. It was in March, 1871.

DONALD SUTHERLAND being duly sworn, testified as follows :

Direct examination by Mr. Patterson :

Q. Do you live in Winnipeg, Mr. Sutherland ?

A. I was living in Winnipeg until this summer

Q. How long have you lived in Winnipeg ?

A. About fourteen years.

Q. Where were you living in 1870 ?

A. In Winnipeg.

Q. Do you know William Logan ?

A. Yes, sir.

Q. Do you know where he lived in that year ? In '70 ?

A. Yes.

Q. Where ?

A. Well, until the fall of 1870 I think he was living in St. Paul's ; I think his family were in St. Paul's, if I am not mistaken, until the fall of 1870, and then moved into Winnipeg, into the house that he built near Main street. 10

Q. On which side ?

A. On the east side.

Q. Can you locate it as to the north and south ? Whereabouts was it ?

A. Well, it was about north, half-way between the corner of Common and Fonseca streets, a little north of that.

Q. You have a plan before you ; could you look at it and see by the letters and numbers what lots he was on ?

A. Yes ; he lived on lot C, according to this plan, that is according to my recollection and as nearly as I can make out ; it may possibly have been on D ; it must have been near these lots ; it is somewhere near that line between 30 C and D ; it was somewhere about the line between C and D on Sinclair's map.

Q. You state he went there to live in the fall of '70 ?

A. Yes.

Q. When had he built the house ?

A. That fall ; it was a very small building—a log building—and it did not take him very long to build it ; I should think that in about three or four weeks he had the house built.

Q. Did he put up any more buildings after that ?

A. Yes, he put up two buildings later on, one coming nearer to Main street, in fact, fronting on Main street, and then he put up another to the end of this 40 small building which extended further north ; the building fronting on Main street was a whitewashed house outside.

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By His Lordship :

Q. That log building must have been near Barber's shop?

A. No, the log building was not as near Barber's store as was the one that was fronting on Main street by just about the width of itself.

Q. Which building was north of the small log building?

A. It was a building that stands there yet—to the west, your lordship; the log building was between 50 and 70 feet off Main street, and this white building, which he put up later on, cornering on to it; that is, it was southwards; it was just about the width of itself nearer to the small log building; I think it was rough-cast, plastered and whitewashed.

Q. Was that in the rear of the log building?

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A. No, in front, and nearer to Barber's store.

Q. So that it cornered on the log building?

A. Yes.

Q. I understood, altogether, there were three buildings there. There were these two buildings and a barn, were there not?

A. There was a small barn built behind the other buildings that I spoke of before which was attached to the end of the small log building.

Q. They must have been all near it; near together?

A. Yes, your lordship, they were attached, the two that I speak of, together 20 and the other was cornering on to it.

Q. Well, then, that other building must have been certainly altogether on C. If the log building was near the line the building that cornered on the log building would necessarily have to be altogether on C?

A. Your lordship, I could not be positive how near the line it was, but judging from the plan here it was somewhere close to C, but I would not swear that it was on C.

Q. Are you speaking of the log building or the one that is cornering on it?

A. I am speaking of the three; they would be about one-third of the distance from Barber's store to the corner.

Q. One-third of the way in the direction of Fonseca street?

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A. Yes.

By Mr. Patterson :

Q. That is, Barber's store was on lot B?

Q. How much land did Mr. Logan use around these buildings? About how much?

A. Well, he built a stable in the rear there, some distance back; I am not aware of his using any more of it on his buildings, any more than just the stable in the rear.

Q. I do not mean using it merely for building, but for any other purpose?

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A. Well, for a long time, you know, the whole property from there to the corner was vacant, and he had the use of it all.

Q. Had everybody had use of it?

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A. I believe so ; of course there was nobody went on there for any purpose, and he being in the corner he had the use of it.

Q. Did he make any use of it ?

A. I do not know that he did, except having poles out for stringing a line on or something of that.

Q. You do not say he did that ?

A. I would not swear to it ; it is customary.

Q. Was there a hotel there ?

A. Yes, he had the white house as a hotel or bar-house ; in fact it was a hotel selling liquors ; he kept a stable in the rear.

Q. Of course there was a driving way for horses to get round ? 10

A. Yes, to the rear.

Q. Do you know what land Mr. Fonseca had possession of at the time of the transfer ?

A. Well, he had some land, to my recollection, on the west side of Main street.

Q. What time did he commence to occupy that land ?

A. About the same time as Mr. Logan did on the east side, as near as I can recollect ; I could not say which was first.

Q. You cannot say which was first ?

A. Well, I would not be positive ; I think that he started building that small store on the west side the same fall. He had some timber there for some time before he built. 20

Q. Had Mr. Fonseca possession of this land at the time of the transfer ?

A. Not that I am aware of.

Q. Or any part of this land ?

A. No.

Q. Or about near this land ?

A. He did not claim, to my knowledge, anything in the block at all.

Q. Who was the acknowledged owner of these lots C, D, E and F ?

A. Logan was

Q. He lived there over a year. I suppose, without any concealment ? 30

A. Yes sir.

Q. Do you know Mr. Fonseca's signature ?

A. Yes.

Q. You would know it if you saw it ?

A. Yes.

Fonseca's signature is admitted to his application of July, 1877, and his letter of 3rd October, 1878, and his declaration in favor of Belch's application dated July, 1879 ; and whatever purports to be signed by him, and to come 40 from the Department of the Interior, will be admitted upon the basis that these fyles are evidence, and that these fyles shall be admitted by both sides, and admitted all round that these documents are signed by the persons by whom they purport to be signed, coming from a public office.

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Two letters purporting to come from Ottawa, one is to W. G. Fonseca, dated 8th June, 1881, signed by Col. Dennis, Deputy-Minister of the Interior; the other from the Department of the Interior, dated 15th September, 1883, from John R. Hall, acting secretary, directed to Glass & Glass, certified as a correct copy by P. B. Douglas. These papers are to be admitted as originals, and to go in without further proof.

Cross-examination by Mr. Glass.

Q. You say, about the building on the west side, Mr. Sutherland, that Fonseca put up, you think it was about the same time that the log house was put up by Logan ?

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A. Yes.

Q. Did you say that Fonseca had the material on there some time before ?

A. He had some material there some time before.

Q. Now, if he said it was a year before that, would you contradict it ?

A. That would be in the fall of '69. Well, I could not be positive, but it was some time before.

Q. Logan says that it took him about a week to put up his house before he went into it ?

A. It could not be very long.

Q. And he said he went into it immediately after he put it up. Is that so to the best of your knowledge ?

A. Yes.

Q. And you think he went in the latter part of September ?

A. Yes, in the fall of '70.

Q. You are a son of Senator Sutherland, are you not ?

A. Yes, sir.

Q. The building that Fonseca put up on the west side of the street, I believe, was quite close to C, D, E and F, was it not ?

A. You mean opposite ? Yes, quite close and further south.

Q. I just asked you if it was close ?

A. Nearly opposite ; a little further south ; just about one block further south ; yes, about 66 feet further south.

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Q. That would not be quite ten chains from the southern boundary of 35, would it ?

A. No, sir.

Q. Fonseca's lot that he put his house on would not be as far as ten chains from the southern boundary of 35 ?

A. No.

Q. It would be less than ten chains ?

A. Yes.

Q. It would not be so far north as the southern boundary of 35 ?

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A. No, it would not be about three chains.

Q. Can you tell me whether you remember distinctly at the time of the transfer that the Point holders claimed the whole of lot 35 ?

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A. Yes.

Q. That was a matter generally known to everybody, then?

A. Yes, it was generally known by all the people around.

Q. It was a subject of general conversation

A. Yes, generally known.

Q. And when the trustees were appointed, that was a matter of general information, too?

A. Yes.

Q. In fact, I suppose it was a matter of general conversation out there?

A. Yes.

Q. Lot 35 of the Government survey is the same as, or identical with, 244 of the Hudson's Bay Company's survey, and when you speak of the Common you refer to one or other of these lots? 10

His Lordship addressing Mr. Whitcher, Dominion Lands Agent.

Q. Was the point any part of lot 35, or was the point a distinct thing?

A. No, the Point was laid out in separate lots.

Q. And is between the east front of 35 and the river?

A. Yes; and this Common was never subdivided by the Dominion Government or the Hudson's Bay Co., but the Dominion Government adopted the surveys of the trustees, and subsequently there was a further subdivision made in 20 a westerly direction of a portion of the westerly end of the lot, in order to give the Point holders their proportional part of the Common, containing several hundred lots.

Admitted that the files produced by Mr. Whitcher are records of the public departments and come from Ottawa. The four files produced are: M.A. 2172; M.A. 4416; M.A. 340 (general reference 31775), and No. 9076, or M.A. 3116.

Mr. Whitcher also produces:—Letter book of the Dominion Lands Office, Winnipeg, containing letter-press copies of official letters between the 19th Dec., 1872, to the 18th October, 1873. The signatures to these letters are admitted.

Q. You knew Sabine to be a surveyor under the laws of Assiniboia?

A. Yes, he was one of the authorized surveyors under the old council of Assiniboia before the transfer of the Province. His name was Herbert Lauchlin Sabine. 30

Q. He was afterwards a considerable time in your employment as a surveyor?

A. He was employed as a clerk in the Dominion Lands Office. He was not in the Dominion Government survey, and could not make any surveys for them.

Q. Did you know of his having made a survey of these lots for the Point holders?

A. Yes. 40

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Q. Where is he ?

A. He died last fall—in September, 1885.

Mr. Glass addressing witness (Sutherland).

Q. Do you remember Sabine ?

A. Yes.

Q. He was well-known ?

A. Yes.

Q. About the only surveyor ?

A. Yes, Mr. Goulet was another one.

Q. Do you remember when he made a survey for the Point people ? 10

A. I could not tell you what year it was ; I remember him making a survey.

Q. That is Sabine ?

A. Yes.

Q. About how long before the transfer ?

A. I would not like to say how many years ; it was not very long before.

I was going to say about two or three years ; I would not like to say.

Q. Would it be about '67 ?

A. That would be pretty near the time.

Q. Now, do you know that Fonseca paid about three-fourths of the whole expense of that survey ? 20

A. No, I was not aware of that ; he told me he had paid a portion

Q. What we want to know is this : we want to see how many shares he paid the expense of ?

A. He did not tell me that—he told me he paid a portion.

Q. You say that Logan was in possession of C. You are looking at that plan now, whose name do you see written on C ?

A. Logan's.

Q. You see Logan's name written on C ?

A. Yes, but looking at the whole plan, I know the ground—

Q. Well, I am asking you only one question at a time. You see Logan's 30 name written on C ?

A. Yes.

Q. How many feet of frontage are there on C ?

A. I should judge there would be about 66 feet, as near as possible.

Q. Now, there are 70 feet marked there. Have you any doubt as to the correctness of that ?

A. I would not be positive as to that. I remember distinctly as far as I know, on account of having seen all of these lots, I know that they were 66 feet.

Q. Now, Barber had 66 feet as well, had he not ?

A. Yes, I think it was just the one lot he had.

Q. Then as far as Barber goes, you think that Logan would commence im- 40 mediately north of him ?

A. Yes, on the line.

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Q. Logan would commence immediately north of Barber, and Barber commenced immediately north of Sutherland ?

A. Yes.

Q. Sutherland had 66 feet in A ?

A. Yes.

Q. Barber had 66 feet north of him ?

A. Yes.

Q. And then Logan begins ?

A. Yes.

Q. You see, now, upon looking at that plan, Mr. Sutherland, that lot B is 10 a very much wider lot than lot A ?

A. Yes.

Q. Now, do you see 99 feet marked on it ?

A. I do.

Q. You said something more, Mr. Sutherland, about Logan being upon C, and the land lying vacant between that and Fonseca street.

A. Yes, I said he was either about the line between C and D; I would not be positive.

Q. But there was one thing you were positive of, anyway, that after 66 feet were exhausted in A, and 66 feet exhausted in B, that then Logan commenced ?

A. I would not like to be positive, for all I know is that I thought nearly all the lots on Main street, in that survey, were 66 feet.

Q. After Logan's occupancy that you speak of, the corner up to Fonseca street was vacant ?

A. Yes.

Q. When was there a fence put round them at all ?

A. There was no fence put round them at all until lately—until within three or four years.

Q. Were you there when Mr. Fonseca fenced the lots ?

A. I was living down there; yes.

Q. You were not there to see Fonseca fence ?

A. No.

Q. What authority had Logan for going on C, as far as you know ? You would know about it, I suppose; you were not one of the trustees ?

A. No. All I know about it is that he put timber there and lived there.

Q. I was speaking to you Mr. Sutherland about the general notoriety about the Common. You say it was a general subject of conversation, the various phases through which it went ?

A. Yes, I knew people had appointed the trustees some time before.

Q. I am speaking to you about the time anterior to the trustees. For instance, when Sabine surveyed, that was another phase of it ?

A. Yes.

Q. From that time forward had they not taken it in charge ?

A. Yes, through the trustees

Q. At the time of the survey the Point holders took it in charge ?

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A. Yes.

Q. Which was '67?

A. Yes.

Q. The trustees were appointed soon after?

A. Yes.

Q. Barber's store was a general rendezvous for the owners and others to meet and examine matters?

A. Yes, they used to have meetings there.

Q. Were you a Point owner?

A. No, my father was.

Q. William Logan was a clerk in the store, I believe?

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Q. It created some little sensation when the order-in-council of the 10th of May, 1877, came out deciding they were not to get it?

A. How do you mean?

Q. There was some excitement among the people?

A. No, I do not mean that; I never saw where they were not to get it.

Q. When the Government were only to give them acre for acre it created quite an excitement, did it not?

A. Yes, people were afraid they were losing their rights.

Q. The population was not very great there at that time?

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A. No, there were merely a few people on the small lots—parish lots.

Q. So that anything that would be done would be a general subject of conversation among these people?

A. Yes.

Re-examination by Mr. Patterson:

Q. My learned friend, in putting a question to you about the Common, said the trustees were appointed soon after Sabine's survey. Now, what is your recollection as to the time the trustees were appointed?

A. I do not know exactly, but it was some time afterwards.

Q. It would be before the transfer?

A. Yes.

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Q. You are sure of that?

A. Perfectly sure—Yes, I think so—I would not really like to swear, but I almost feel sure that it was before the transfer, I thought it was some time in '68 or '69.

Q. They were appointed at a public meeting of the Point holders, were they not?

A. Yes.

Q. Now then, if you saw the deed appointing the trustees, and that stated the date of that public meeting was July, 1872—would you swear that the 40 trustees were appointed before the transfer?

A. Well, my impression always was that it was before the transfer.

Q. You have seen the trust deed?

A. Yes, I knew there was a trust deed signed, appointing the trustees.

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Q. Well, that was the time they were appointed ?

A. Yes.

Q. Well, now, do you know that that deed is dated, October, 1872 ?

A. Of course, I do not know what you are referring to, but I am almost certain that there were trustees before '72.

Q. What trustees ?

A. There were persons appointed.

A. I could not say they were at first.

Q. Were there two sets of trustees, to your recollection ?

A. I think there were. What I mean is that first of all there were Mr. 10 Fonseca and my father, and I forget who was the other—W. R. Bown—but I am almost sure that there were trustees before the transfer, but whether the trustees signed the trust deed or not, I could not say.

Q. Is it likely that you are mistaken about the date of the transfer, and the appointment of the trustees ?

A. I would not like to be too positive.

Q. You would not like to swear that there were trustees appointed to look after the interests of the Common, before the date of that deed ?

A. No, but I have a very strong impression that there were.

Q. You stated in answer to my learned friend, that the Point holders 20 claimed the whole of the Common.

A. Yes.

Q. Now, of what time are you speaking when you say that ?

A. From the time that they had their first meetings.

Q. The meeting appointing their trustees ?

A. Yes.

Q. You mean by that, that the Point holders claimed the whole of the Common without regard to any person having been in possession of a portion ? Do you mean that they claimed portions like Mr. Fonseca's house that he was in possession of ? Did they claim the right to that, and want to turn them out ? 30

A. No.

Mr. Glass objects.

Q. I am asking whether the Point holders claimed the whole Common so as to turn out of possession men like Logan and Fonseca, who were in possession at that time and had buildings there ; whether they claimed every square inch to the exclusion of men who were in possession ?

A. I would not say that—what I understood was that they were claiming the Common as "a Common."

Q. You were not a trustee nor a Point holder ?

A. No ; but my father was a trustee and I knew everything that went on 40 there. They never claimed to turn out any of those parties who were in possession.

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THOMAS LUSTED, being duly sworn, testified as follows :

Direct examination by Mr. Patterson :

Q You live in Stonewall, Mr. Lusted ?

A. Yes

Q. You are registrar of the County of Rockwood ?

A. Yes.

Q. Did you live in Winnipeg in 1870 ?

A I did.

Q. Did you know William Logan in that year ?

A. I did.

Q. Where did he live in that year ?

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A I am not prepared to swear where he lived in that year ; not in that year—in '70. My impression is that he lived on Point Douglas Common some-time during that year.

Q. Do you know where he lived in '71 or '72 ?

A. He lived in '71 and '72 on the Common—what is called Common property—Point Douglas Common property.

Q. You know it for certain ?

A. I know that for certain ; I am only uncertain as to the period he went into his house.

Q. When did you first go to live with him ?

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A. I did not go to live with him.

Q. Do you remember, somewhere about the same time, seeing a store on the other side of the street, occupied by Mr. Fonseca ?

A. At what time ?

Q. At about anywhere from '71, '72, '73 or '74.

A. Well, of course, I did not want to get away.

Q. Do you remember at all a store of Mr. Fonseca ?

A. I think it was put up on the other side of the street. Perhaps it might have been commenced in '71 and finished in '72. I think it was, probably.

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Q. At all events, you remember a store built that time ?

A. Yes.

Q. Now, which building was put up first ?

A. Mr. Logan's building was put up first. Allow me to explain : I am not prepared to say that a certain house was built first, but there was a building owned and occupied by Mr. Logan—a small log building.

Q. That would be on the east side of the street ?

A. Yes. I think the first original little building was put up in the fall of '69. I mean that the building was put up, and I think it was occupied. I know the building was put up in the fall of '69, but I am not certain it was 40 occupied.

Q. Are you sure ?

A. The only circumstance I can remember it by is, that '69 was the year of the rebellion. I went down to see Mr. Johnson, a friend of mine, living below

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that, on the river, whose property afterwards I bought; I went to see him, and going to cut across the angle I stepped into a pit that had been excavated for cutting mud out to make a building, and I did not know anything about a building being there until I stumbled into this pit. He lived on Lot 33—what is called Lot 33 in the survey. Now, my Lord, I give this as my conviction of the date; I am not absolutely certain, nor do I swear that it was the date; but it was an errand in seeing Mr. Clark with regard to the rebellion that took me there that night.

Q. Do you remember which building was up first—Logan's or Fonseca's?

A. I answered, I say, that Logan's was up first.

Q. Now, are you sure of that?

A. I am quite sure.

Q. Before Fonseca's store of the west side?

A. Yes.

Q. Have you any circumstance that enables you to say that positively?

A. The circumstance that I remember from is this: I bought Mr. Johnson's property, some of which he sold at that time, and his right and title to the Common as proprietor of this lot. He sold not only that, but his right and title to the Common to me.

Q. Johnson's property is a parish lot?

A. Yes.

Q. And what went with it?

A. The right and title that he had to the Common property as purtenant to the parish lot.

Q. And I suppose you have got the date of that deed in your mind so that you can fix it from that?

A. No. The reason, I say, I remember the date is, I bought in the spring of '71—in the winter or early spring of '71 the first three months of '71—some time before the last of March—and I then asked Mr. Johnson how it was that these men were occupying some parts of the property, and he told me. It is only by this circumstance that I can answer. The reason is that in my purchase I objected to allowing squatters to go on.

Q. In consequence of that, did you take any means to ascertain whether there were squatters there or not?

No answer.

Q. Have you any doubt in your own mind as to which building was up first?

A. No, sir.

Q. You bought Johnson's lot and you knew who were there on the Common at that time?

A. Yes.

Q. And you would know the order of the buildings from that?

A. Yes.

Q. Logan's property was there when you bought?

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Q. Was Fonseca's property there when you bought?

A. I will not swear that it was not commenced, but it was not up at that date. I considered that I had no right to interfere.

Q. You are firmly convinced that Logan's building was up on the east side of the road before Fonseca's was up on the west side?

A. I swear emphatically that it was; there was no building, but the material may have been on the ground. In referring to the date, I mean the date of the purchase of the property from Johnson.

Q. At the date of your purchase from Johnson, was Logan's building up then? 10

A. Yes.

Q. And Fonseca's was not?

A. No.

Q. Can you fix the date?

A. I say it was during the first three months of '71, or within four. In my purchase from Johnson I objected to squatters being on the Common. I swear most positively that Logan's building was on the east side of the road—a little log building—and was erected before Fonseca's building on the west side. Fonseca's building was not up, but the material may have been on the ground at the date of my purchase from Johnson. Logan's building had been 20 put up but Fonseca's had not.

Cross-examination by Mr. Glass:

Q. When did you get to Johnson's place first?

A. About the rebellion, it might have been some time in September, '69—September or October, '69.

Q. It was then night, was it?

A. Yes.

Q. And you tumbled into a hole?

A. Yes.

Q. And you had to cross right over, in going down, you passed over that 30 block?

A. Right over the open prairie.

Q. And you came down across these lots B and C?

A. I do not say whether it was B and C, or what lots it was, but it was lots this side of the railway, probably 150 yards.

Q. And you tumbled into a hole where they had been digging up sand for plastering?

A. Yes.

Q. That was in the fall of '69?

A. I said I swear that it was in the fall of '69 or '70—I am not sure which. 40

Q. And after you tumbled into the hole, you got up and marked it, I suppose?

Q. How soon after that were you in that neighborhood?

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A. I saw the house that night as I told you—I saw William Logan's log house that night, the night that I fell into the hole.

Q. After that did you make an inspection of the place?

A. No.

Q. How soon after that were you near that neighborhood?

A. I cannot tell how soon—well, within a month or so, it is impossible for me to say.

Q. Can you tell within three or four months?

A. You might allow me to explain the reason why I cannot swear to it. I wish to state as I stated in the first evidence, that I swear to the best of my 10 knowledge and belief that it was in '69, I was not going to swear positively if it was the fall of '70. The reason is, if it was in '69, it would have been impossible for me to have been there for the next seven or eight months; and I beg to correct myself. If it was '69 I was there, it would be somewhere about the 10th to the 17th of December, and I might have been there between times, I cannot say.

Q. Well now, if it was in '69, how soon after December would you be there again?

A. I would not be there, if it would be in 1869, until the 17th December, until about the 28th July. afterwards.

Q. Now, we are speaking on that basis. You would be there again in July? 20

A. I say not until after July. Well, it was impossible for me to be there until the 28th. because I did not return from Ontario until the 28th July, 1870.

Q. When did you go to Ontario?

A. I left this place on the 17th December, '69 and returned on the 28th July, 1870.

Q. If it was in '70 instead of '69 how soon would you be about there?

A. Well, I cannot really state—within a few days, and I might not have been there for a few months.

Q. If this occurred in '70, that you speak about, you might have been there 80 in a few days and perhaps might not have been there for a few months?

A. Yes.

Q. Where were you living then?

A. In the city.

Q. Were you married then? Keeping house?

A. Yes, I was living in what we call the central part of the city—I was living on Bannatyne estate.

By Mr. Tupper:

Q. I suppose you do not pretend to speak with confidence as to everything that occurred fifteen years ago?

A. I can only speak with confidence, about what I feel certain. 40

Q. You will not attempt to fix a date within less than a year?

A. Oh, yes, I would.

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Q. I mean, you state you would not swear whether this occurred in '69 or '70?

A. Not that particularly.

Q. Well, I say that is something that occurred 16 years ago and you will not attempt to come within a year of the date?

A. No, I will not swear positively that I fell into that pit in the fall of '69—I think so.

Q. And you fix your memory as to this question, on that hole?

A. Yes.

Q. So that if that hole was dug, it might be for the purpose of plastering 10 somebody else's house?

A. I saw the house.

Q. Was there only one house?

A. Yes.

Q. In that neighborhood?

A. Yes.

Q. How far was the house from the hole?

A. Three or four rods.

Q. How far was the next house from the hole?

A. The next house would be, at the lowest calculation, from 50 to 80 rods. 20

Q. Where Fonseca was living? How did you know this was not for somebody else's house?

A. I do not swear that this was not because why I saw the house there.

Q. I suppose you have been discussing this question as soon as you were able conveniently?

A. I think not—the only question I was asked was if I could state in confidence and I stated the evidence to the gentlemen just as I do now.

Q. Certain questions were suggested to you?

A. No; the gentleman asked me if I knew of any circumstances.

Q. And you have been trying to think what occurred?

A. Yes.

Q. You are so uncertain that you cannot fix the date to any of the times within a year?

A. Yes, just as I have given it.

CHARLES KENNEDY, being duly sworn, testified as follows:

Direct examination by Mr. Patterson:

Q. You are employed at the Registry office?

A. Yes, I am a clerk.

Q. In the Registry office of the City of Winnipeg?

A. Yes.

Q. Do you produce documents from the Registry office?

A. Yes.

Q. Maps and plans? Let me see the Sinclair plan; (plan produced.)

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Q. Is that certified ?

A. It is certified as being registered and fyled by the late W. N. Kennedy.

Q. Was he registrar when he certified to that ?

A. Yes.

Q. Was there a separate registry office at that time for Winnipeg, or was Selkirk and Winnipeg all one registry office ?

A. All one.

Q. What is the date of that certificate ? There is a date to the registration certificate ?

A. It is dated the 26th December, 1870.

Q. What is the date of registration ?

A. 30th September, '72.

Q. By whom was the plan registered ?

A. By Fonseca, Sutherland and Barber, trustees for the company—William Gomez Fonseca, John Sutherland and E. L. Barber, trustees for the company.

Q. Did he make the copy that we put in here, or not ?

A. I do not know.

Q. Look and see ?

A. I think he did ; I am not certain.

Admitted that the copy we have been using is a true copy of the original. 20

Q. You are in the registry office ?

A. Yes, my Lord.

Q. You would know the handwriting and the work if you are ; whose work is it ?

A. A Mr. Campbell, a surveyor that was in the office for a while ?

This is also a true copy in respect to the name of Mr. Fonseca on the Point lots As far as these three lots, C. D and F, block 14, this map is a true copy of the original.

Q. It was also true so far as it represented Mr. Fonseca's holding upon the Point ?

A. Yes.

Q. What was the other point on which you agree ? The holding of Fonseca immediately west of Neil McDonald ?

A. Yes.

Q. Do you intend to admit that they have nothing at all under the homestead ?

A. Why, yes ; the homestead.

Q. Admitted in general terms that one plan is a copy of the other ?

A. Yes.

The original Sinclair plan is in the registry office and being produced, and 40 the copy is the one we have been using thus far, marked "Exhibit 8."

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Mr. Patterson to witness :

Q. Have you this City map?

A. No.

Q. Have you registration No. 3815 there?

A. No.

Mr. Patterson : I desire to put in the original deeds in the chain of title from Logan to Mrs. Mercer.

To witness.

Q. Here is a deed dated 7th December, '75, from William Logan and wife to David H. Thomas. Is that certified on the back, and by whom? 10

A. Yes; by W. N. Kennedy, registrar.

Q. Is it an original?

A. Yes.

Q. Registered when?

A. 23rd March, 1876.

Q. Have you No. 3819? Is this certified or not?

A. Thomas to Logan, dated 22nd March, 1876; registered 23rd March, 1876.

Q. Have you No. 3841? What is that?

A. Certified copy from our office; certified by W. N. Kennedy. David H. Thomas to Wm. Logan, dated 28th March, 1876; registered 1st April, 1876. 20

Q. What is this one?

A. An original, certified by W. N. Kennedy, dated 19th June, 1876; registered 20th June, 1876. David H. Thomas to Frederic C. Mercer.

Q. Have you No. 4045?

A. No.

Q. What is this?

A. Deed; William Logan to Frederic C. Mercer, 20th June, '76; registered 24th June, '76; signed by John Kennedy, per registrar.

Q. The next?

A. A mortgage made by F. C. Mercer to Robert Gunn, dated 24th June, 30 '76; registered same day.

Q. This is an assignment of mortgage, Robert Gunn to Eliza Mercer, dated 7th March, 1879; is that certified, and by whom?

A. Yes.

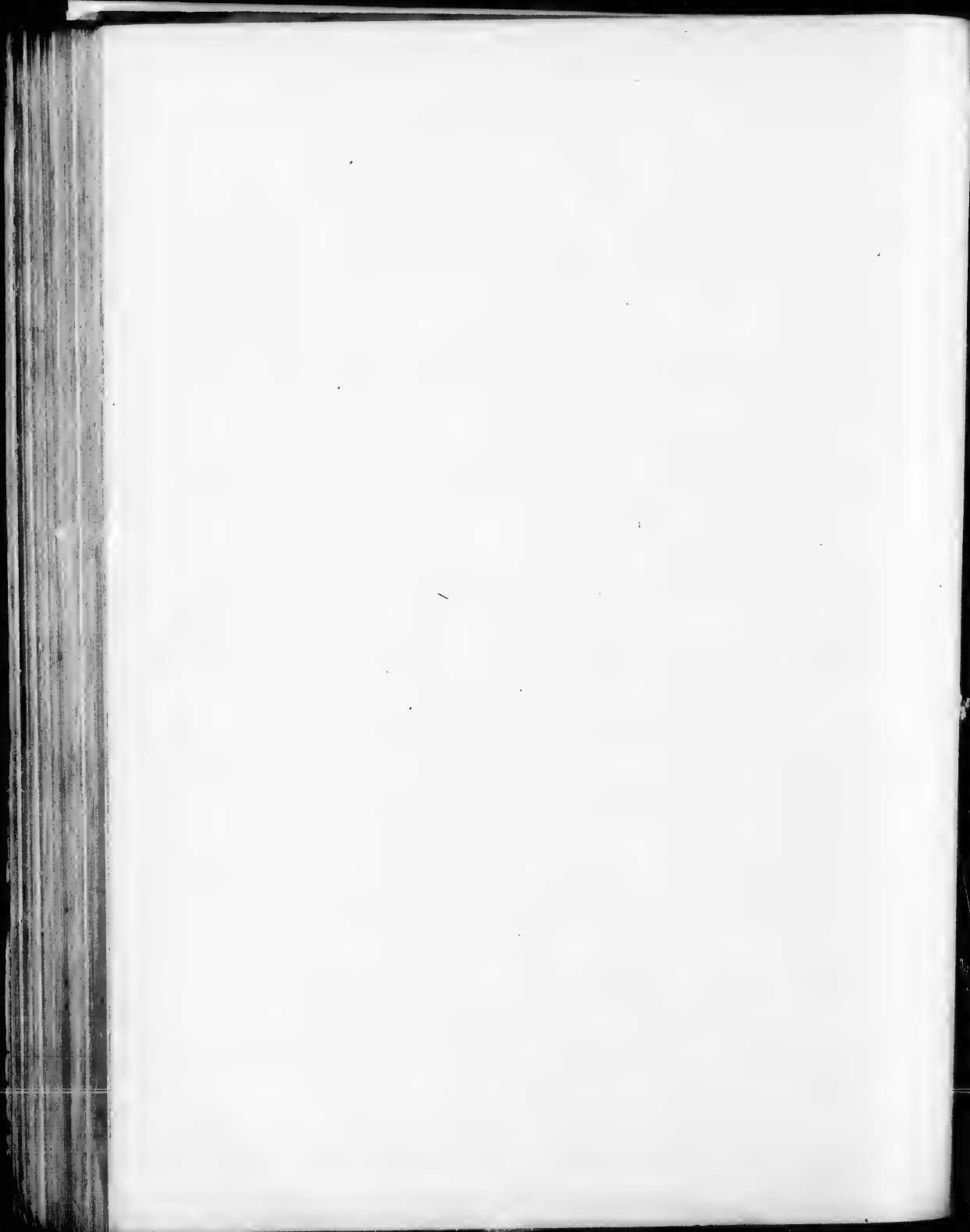
Q. Is this certified, and by whom?

A. Certified by E. R. Scobel, deputy-registrar. It is a deed made by F. C. Mercer to G. H. Pattison, dated 8th November, 1880, and registered 9th November of the same year.

Q. The next is a deed, G. H. Pattison to Eliza Mercer, dated 31st January, 1882, and registered 28th February, 1882. Is that certified?

A. Yes, by W. N. Kennedy, deputy-registrar.

Q. Is that an original?



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A. Yes.

Q. Have you got original No. 33133 ?

A. This is a deed, F. C. Mercer to Eliza Mercer, dated 9th October, 1882, registered 18th October, 1882. We have not a copy to put in.

Mr. Glass desires that the chain of title should be shown.

Q. Here is a deed, W. G. Fonseca to John Schultz, dated December 24th, 1879, and registered 31st January, 1880. Is that an original duplicate, signed by W. N. Kennedy, registrar ?

A. Yes.

Q. Here is a deed from David Henry Thomas to John Schultz, dated December 19th, 1876, registered 21st December, 1876. Is that an original deed, registered and certified ?

No answer. (Certified copy put in.)

(Witness to stand over till to-morrow to produce further papers.)

GEORGE DUNCAN MCVICAR, being duly sworn, testified as follows :—

Direct examination by Mr. Patterson.

Q. You live in Winnipeg, Mr. McVicar ?

A. Yes.

Q. When did you come to Winnipeg to live ?

A. 1869.

Q. Did you stay right on here from that time ?

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A. I have been here from that time until now, with the exception of visits from the province ; I have not been here continuously.

Q. You have made occasional visits away ?

A. Yes, sir.

Q. Do you know William Logan ?

A. Yes, sir.

Q. When did you first know him ?

A. I think in 1870.

Q. Where was he living when you first knew him ?

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A. He was living at Point Douglas.

Q. Whereabouts ?

A. In a small house on the east side of Main street.

Q. Is that the same house where he lived a good many years ?

A. He lived there quite a number of years.

Q. Near what other street ?

A. Near what is now known as Common street on one side and Fonseca street on the other ?

Q. Between Common and Fonseca streets ?

A. Yes, I think so

Q. Is the house there yet ?

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A. A portion of it; it has been built round, but I think the original house is there yet.

Q. Could you point out on this map (showing witness plan) about where his first house was built?

A. There is nothing on this map to indicate where it is. I could point it out on the city map.

Q. When was the earliest time that you know of his living there?

A. I think in 1870; about September.

Q. Did you board with him?

A. Yes, sir.

Q. Did you afterwards rent a house from him?

A. Yes.

Q. Was that the first house that he built?

A. It was not; adjoining to the first house—a sort of store in front of the little log house.

Q. In which direction from the little log house was the second house that he built?

A. It was built towards Main street.

Q. And you rented that?

A. Yes, sir.

Q. For how long?

A. Well, I could not tell you.

Q. For some time?

A. Yes, sir, we occupied it for some time.

Q. What did you use it for?

A. A general store, and office for agricultural implements and machinery.

Q. Paying rent to Logan?

A. Yes.

Q. Where was the building that you rented from him situated in reference to the little log house?

A. West, and perhaps a little south, but adjoining to it.

Q. Then what other buildings did he put up after that?

A. I do not know that he put up any.

Q. How long did you occupy it?

A. I could not give the time definitely. It was probably the greater part of a year.

Q. Do you know anything about that rough-cast white hotel; that one westward and southward of the little original building?

A. Yes.

Q. I suppose it was not used at first as a hotel?

A. No, it was used by us first; we occupied it immediately after it was finished.

Q. Well, how soon did you occupy it?

A. I could not give you the date.

Q. Do you remember the year?

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A. I think some time in 1871.

Q. Before that were you boarding with Logan?

A. And at that time.

Q. In September, 1870, when you knew that Logan's house was there, was any building on the opposite side of the street?

A. Yes, sir; there was a building occupied as a general store by one Sutherland, to the southwest, on the opposite side of the street. The building is still in existence, and is on Common street, immediately back of the new hotel. That was the only building there.

Q. Was there any other store?

A. That was the only building on the opposite side of the street that I remember. I can speak positively; that was the only building in September, 1870. 10

Q. Was there any other building put up on the west side afterwards?

A. Yes, one by Mr. Fonseca, nearly opposite, a little south.

Q. When was that?

A. I could not tell you.

Q. It was after Logan's first building was there?

A. Yes.

Q. Have you any doubt about that—that it was after Logan's first house 20 was put up?

A. No, sir, not the least.

Q. Was Fonseca's store put up till 1870?

A. No, my impression is there may have been materials there, but the house was not completed in 1870. What I mean is, that Fonseca's building was not put up as ordinary buildings are, within a month or so, but was put up in little pieces at a time.

Q. When was it commenced?

A. I could not say definitely; the only thing that I can say definitely as to that is that the building was not there in 1870. 30

Q. And that Logan's was?

A. Yes.

Q. After coming to this country in 1869, did you go back to Ontario?

A. Yes.

Q. And when did you return from Ontario?

A. I arrived here sometime during the end of August or the beginning of September; it was about that time.

Q. In 1870?

A. It was in 1870.

Q. That enables you to swear that it was in 1870 that Logan's house was 40 there?

A. Yes, sir, it is from that fact.

Cross-examination by Mr. Glass.

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Q. I will only ask you one question. Do you remember Barber's store? How many feet was it, as near as you can recollect, between the place you rented and Barber's store?

A. I cannot answer that with any definiteness.

Q. Would it be more than fifteen feet.

A. Yes.

Q. Was there a driving way in between the two?

A. There was a space between the two.

Q. Was it used as a gateway going in?

A. There was no fence there.

Q. Do you know the size of the store you occupied, fronting on Main street? 10

A. No.

Q. Well, tell me as near as you can; you are a pretty good judge, I believe?

A. The premises we occupied were from twenty-five to thirty-five feet frontage, by about twelve or fifteen feet deep.

Q. And was your building out close to the sidewalk?

A. No, sir.

Q. How far back?

A. On account of the bend in the street there I cannot say; and at that time there was no definite line of Main street, nor were there any buildings by 20 which one could define the line of Main street.

Q. And you do not know, now, how far the building stood back from Main street? How far would it be—about?

A. I could not tell you. It might be ten feet or it may be two or three.

Q. It would be, then, within two or three feet, or from that to ten feet?

A. I could not give you anything more definite than that. I want to say to you that there was no definite line of Main street, and since that time I have not observed the buildings sufficiently to say within any definite number of feet what distance it was from Main street.

Q. It is between three and ten feet, then?

A. No, sir. 30

Q. Well, then, what is it?

A. I do not know.

Q. When was the line of Main street defined?

A. I do not know, sir.

Q. You cannot tell when the line of Main street was defined? Well, from the line of Main street as it stands now, did that building stand back as much as twenty feet?

No answer.

Q. Did it stand back 50 feet?

A. I do not know. 40

Q. You do not know within any number of feet how near you were to Barber's—about?

A. Not definitely.

Q. Cannot tell within how many feet you were of Barber?

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- A. Not definitely.
- Q. You have no idea how far away you were from Barber's place ?
- A. I have given that.
- Q. Well give me an idea ?
- A. It was a short distance.
- Q. Give me as near as you can how many feet ?
- No answer.
- Q. Well, then, what you have stated is about 15 feet. Is that your idea ?
- A. It might be more ; I do not know.
- Q. Would it be 20 feet ?
- A. I do not know. 10
- Q. Would it be 25 feet ?
- A. I do not know.
- Q. Can you tell if it be 35 feet ?
- A. No.
- Q. Can you tell if it be 40 feet ?
- A. No.
- Q. Your evidence is worth a good deal. You do not know whether it was 100 feet ? It might be 100 feet ?
- A. I do not know whether it might or not.
- Q. You do not know whether it might be 100 feet or not ? 20
- A. No.

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SATURDAY, NOVEMBER 14TH.

JOHN SUTHERLAND, being duly sworn, testified as follows :

Direct examination by Mr. Patterson :

- Q. You live in Kildonan ?
- A. I do.
- Q. How long have you been living there ?
- A. All my life.
- Q. Did you know William Logan in 1870 ?
- A. Yes. 30
- Q. Where did he live in that year ?
- A. He lived on Point Douglas.
- Q. Do you mean in the Parish, on the Point, or on the Common ?
- A. I mean on the Common, except I would not swear that he was on the Common ; I had not been in his house that he had on the Common. He might have been there, but I scarcely think that ; He was living in a little house on the public road.
- Q. Do you know the house where he lived, on the corner of Main and Fonseca streets ?
- A. I know that house. 40

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Q. Can you tell us when he put that up?

A. He put it up before the rebellion. I do not know when he put it up, but I know that it was up the winter of the rebellion of '69 and '70. He put it up, I believe, the summer before. I remember the house was there.

Q. Are you referring to the log house at the corner of Main and Fonseca streets, on the east side of Main? On the east and south?

A. I could not tell you which side it was on. I mean the little log house that he built there. Afterwards he built a house that he used as a bar.

Q. You mean the house that he used for a number of years?

A. They were selling liquor there; they had a bar-room. Just on the 10 same property.

Q. Do you remember Mr. McVicar occupying a portion of the premises?

A. I remember Mr. McVicar was there.

Q. What is Mr. McVicar's name?

A. I think they were both living there at that time—I am not sure. I know that the house where I used to meet them and where they used to do their business was east of Main street. They might have been occupying a house on Main street.

Q. What about McVicar?

A. I do not know that it is the same house he occupied. The place he 20 occupied was a little further off Main street than the house I am referring to. We used to do some business with him at that time. It would be a little north-east of the Logan property, that is the Logan house, where they used to have the bar.

Q. Which building was north-east of the other?

A. I do not know. I bought stuff from there. The house that Logan put up later and was selling liquor in was in what direction from him.

Q. He was north-east of the house that Logan was selling liquor in?

A. Yes.

Q. Do you know where the house is that Logan built and went to live in 30 first?

A. I do not know whether that house is there now or not. It was on the east or rather on the north-east, that he used to sell the liquor in.

Q. What house was that?

A. The first house that he built was a little further off Main street—was not built on the Main street. The second house that he built there was built on Main street, of course we did not call it Main street then; it was a great highway then.

Q. How do you describe that house?

A. The first house that he built was a little further off Main street. It 40 would have been on the same property, I should judge. It was a little further off the Main street than the second one he built—about a block, or it might have been two, if I remember right.

Q. On the same property?

A. I think it was on the same property.



Q. Now you speak of McVicar's house. How was McVicar's house situated with reference to either of these?

A. His own house was further north of Main street than this. I understood it to be his own house. He occupied the house. I could not say if it were McVicar's house. I know he lived there, and I know that Mr. James Henderson lived in that house afterwards, also

Q. The one occupied by McVicar was further north than Logan's?

A. Yes, it was further north than both.

Q. These two buildings were attached together—one built on the end of the other?

A. Logan's? Yes; not exactly on the end; it was rather on the side. They were attached. 10

Q. Which two do you mean?

A. The first and the second he built was something in the form of an L. The first was built on the side of the Main road, just south. There was a kind of a passage between them.

Q. Do you remember when Mr. Fonseca's store, on the other side of Main street was built?

A. It was built some time shortly after Logan's.

Q. After Logan's what?

A. After Logan's first house, 20

Q. That is on the west side of the one you mean?

A. I could not tell you when that house was built—It was standing there in the winter of the rebellion—'69 and '70

Q. Which house was put up first, Logan's or Fonseca's?

A. There is no doubt in my mind that Logan's house was the first put up there; that is, in the Common.

Q. Of these two houses, that is, Logan's and Fonseca's?

A. Yes.

Cross-examination by Mr. Glass.

Q. Mr. Sutherland, you remember Barber's store? 30

A. Down at Point Douglas? Yes.

Q. Do you know Fonseca's homestead?

A. Where he is living. He had a store there.

Q. You know Fonseca's homestead—that is, east of where you are talking of?

A. Yes

His Lordship: East of what?

A. East of block 14.

Q. You know Fonseca's house south of that?

A. Yes, he had a store there. 40

Q. How many years before had he been there?

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A. I could not tell you how many years. He had been there a good while; he was there before that a long time.

Q. Where?

A. On his homestead

Q. Do you know as a matter of fact whether he would be there as early as '61 or '62? Do you remember the year of the flood?

Yes; '61 was the year of the flood.

Q. Did he go there immediately after the flood?

A. I could not say that he was there; he might possibly have been.

Q. Did he go there immediately afterwards?

A. He might; it could not have been very long after it any way. I do not say he was there in '61, but it could not have been very long after it. 10

Q. Now, has he continued to live there from that time up to the present?

A. Really, I could not tell you.

Q. As far as you know?

A. I could not tell you where Mr. Fonseca is living; I knew he was there at one time.

Q. Did you ever see him go away from it?

A. No.

Q. Now, Barber built a store, did he not, on Main street, near Senator Sutherland's lot? 20

A. Barber built it for himself.

Q. How long before Logan's was Barber's built? Where was Barber's lot situated, north or south of the little log hut?

A. Really, I cannot tell you; I could not say whether it was his own or not.

Q. A moment ago you said that Barber was there?

A. Before I referred to Point Douglas; that would be north of the little log house about half a mile. The first one that he had was on the Common.

Q. Do you know about Barber's place next to the little log house? 80

A. No.

Q. But you do remember his old store?

A. Did not the land belong to Klyne at one time?

Q. How far north?

A. It would not be quite half a mile north-east.

Q. Do you know that Barber had a store afterwards on Main street, or on the great highway?

A. Yes.

Q. Was that built before or after the little-log house?

A. It was built afterwards.

Q. About how long?

A. I could not tell you. 40

Q. As near as you can, how long?

A. I could not swear, but it could not have been within a year afterwards.

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Q. Can you tell me how far that store of Barber's was from the little log house, and in what direction?

A. I have said before that I could not say that Barber built a house. I am talking about a house that Barber lived in.

Q. How far was that store that he kept there from the little log house, as near as you can?

A. Well, to the best of my recollection it must have been within fifty yards of it.

Q. Are you prepared to say it was fifteen feet from it?

A. No, I cannot swear that it was fifteen feet. I have been in the house 10 oftentimes.

Q. Now, was there a gateway between Barber's store and the little log house?

A. Off the Main street you mean?

Q. Off the Main street through.

A. Really, I cannot remember.

Q. You do not remember whether there was a gateway or not. Now, do you remember whether Senator Sutherland put up a building there or not?

A. Yes.

Q. What direction was Barber's store from the little log house?

A. South; my recollection is that it was south.

Q. Then it would be between the little log house and Sutherland's?

A. Yes.

Q. Are you prepared to say that that building that Barber was in was put up within two years of the little log house was put up?

A. No, I would not swear to that.

Q. How far was Sutherland's store from Barber's—how many feet?

A. I cannot remember.

Q. Now, you remember Sutherland's store. How far was Sutherland's from the corner of Common street? (Showing witness a diagram).

A. Really, I cannot tell you. There is a street; Sutherland's house is on the street.

Q. How far was it from the corner of that other street?

A. I could not say; Sutherland's house was on the corner of some street and Main street.

Q. How wide is the house on Main street?

A. I could not tell you; it is about 25 feet—the first one.

Q. What then?

A. I could not tell you how wide it is now.

Q. And how far was it from Barber's?

A. The distance between the two? They were not far apart; it would be about 20 feet apart; they must have been more than that.

Q. Would they be 30? Was there a gateway between Barber's store and Sutherland's store?

A. I do not remember.



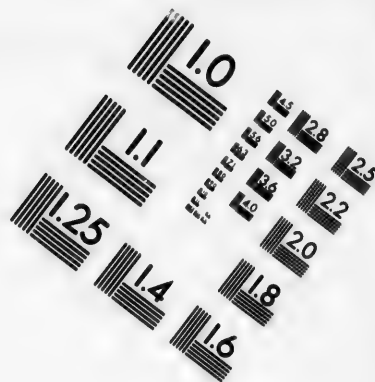
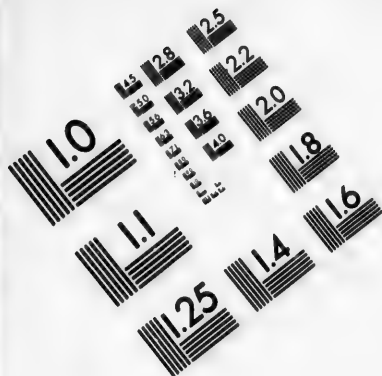
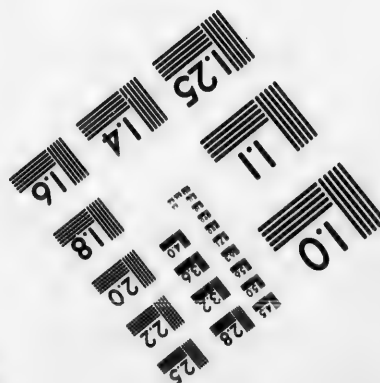
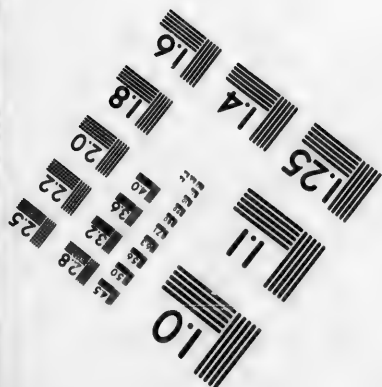
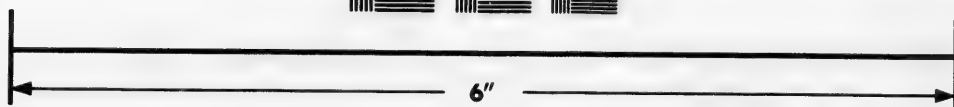
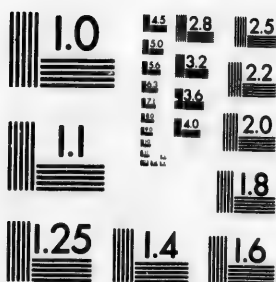


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Q. Well, then, how many feet would there be, to the best of your knowledge between that store and Barber's store?

A. I could not tell you whether it was 20 feet or 30 feet.

Q. Just give your best judgment within 10 or 15 feet. How many feet was there between Sutherland's store and Barber's? Just the best you can. Was it further than this room?

A. That way (from the door to the windows)? It was further than that.

Q. You know what 30 or 40 feet is?

A. Of course I do.

Q. Give me your best judgment; I do not care what it is?

A. Well, I would not swear; I would not swear it was more than 20 feet, and if you say it is 30 feet I would not say it was not. 10

Q. Just put it between two outside numbers and then we will have done with it. It was over ten and not less than so much?

A. I would say it would be between 20 and 50 feet, anyway

Q. Now, how wide was Barber's store?

A. Could not say; it would be about 25 feet, I suppose.

Q. How far would it be then from Barber's store to the little log house?

A. Might be 8 feet—6 or 8 feet—just a passage between the two.

Q. It would not be less than 5 or more than 20?

A. Oh, yes, it was not twenty. It would not be more than 10 anyway. 20

Q. And you resided there all your life up to that time?

A. In Kildonan.

Q. How far is that from this place?

A. I live about $3\frac{1}{2}$ miles or thereabouts

Q. And you had to pass this place going to the Fort—that is Upper Fort Garry, where you did your business.

A. Yes.

Q. And you always were familiar, I suppose, with the early inhabitants?

A. I knew them nearly all.

Q. You have a good memory?

A. Some cases, such as the rebellion.

Q. I suppose you remember the rebellion very well?

A. Yes, I do.

Q. Barber's store, then, would be built some time a year or so after Fonseca's store on the other side of the street?

A. It must have been a year or so; it must have been about a year afterwards.

Q. Can you tell me—do you remember Mr. Sutherland—about Fonseca having the frame part up before it was built?

A. I do not know whether it was that house or the other one, but the frame was standing for some time; he built two. 40

Q. Now, the allegation is that that frame was put up for some time, and it was standing there a long time before they finished it. Do you contradict that?

A. I do not know what you mean by a long time. The frame was standing.

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Q. In fact he put the material on and built the cellar, and next year he finished it. Is that true?

A. Well, it may possibly be true. I know that the frame was standing there for some time.

Q. You remember the second house that was put up by Logan?

A. In reference to the one he kept the bar in?

Q. I have reference to the little log house. Try and remember as nearly as you can. Was that building in front of the little log house?

A. Yes.

Q. And a little to the north?

A. A little to the south.

Q. How large would that building be?

A. The second one? About 25 or 30 feet. I should judge about 25 feet on Main street and 30 feet deep.

Q. Then, did he ever put any other building up?

A. Yes; I do not know whether it was he or not; another came up pretty soon after that, just behind. I think it belonged to Mr. Logan—due east from that.

Q. Was that a stable?

A. I think Mr. Logan lived in that.

Q. The third building would lie between Fonseca's homestead and the little house?

A. Yes.

Q. What size was that, now?

A. Pretty nice sized house, about 25 feet by 30 feet, or something like that.

Q. Was there any other house put up there by him?

A. I could not say. Things began to get crowded then.

Q. It was a bleak prairie at that time?

A. Oh, yes; no fences; not many houses around.

Q. Now, we have got along there. When we come up the other way to 30 Fonseca street were there any fences there, until the last two or three years, north of Fonseca street? What do you say about that?

A. You are talking now north of Logan's house? Yes, there was a fence there. You were asking some time ago about McVicar's house, there was something of a fence around that.

Q. McVicar's house was the white house; that is, the new house he was living in? He was living north of Logan's house?

A. Just that; along the old trail.

Q. You say there was a house 25 x 30 feet, a little in front of the log house. That house was not occupied by McVicar?

A. I did not say that, I say he occupied another a little up further north.

Q. This house in front was the whitecast house?

A. Yes.

Q. Now, McVicar says he occupied that. You say there was another house, then?

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A. Yes, further north.

Q. How far was that north white house?

A. Logan's house and this house that I have reference to? I think it must have been 50 yards or so. It was a house of Henderson, I remember.

Q. Would it be just across where Fonseca street now is?

A. It was strictly down off along the old highway.

Q. Just outside the C.P.R. track?

A. I suppose it was not very far from the old track.

Q. We are confining ourselves to Logan's buildings. Now, on this place of William Logan's we have spoken of three buildings, the little log house, and 10 the one in front of it, and the one in the rear of it; do you know of any other?

A. No.

Re-examination by Mr. Patterson:

Q. What do you say was the distance from the nearest of Logan's buildings to Barber's store?

A. I cannot fix it; I say it must have been between 20 and 50 feet.

Q. The nearest of Logan's buildings to Barber's store?

A. I was talking of Sutherland's.

Q. Are you prepared to swear how near any of Mr. Logan's buildings—the nearest of Mr. Logan's buildings—was to Barber's store?

A. No, I am not prepared to swear; these two houses were not very far apart. 20

Q. You mean Barber's store and Logan's were not far apart?

A. Yes.

Q. You would not be prepared to swear that it was not within any number of feet?

A. No, I would not be prepared to swear within any number of feet; I remember Barber's store; I have been in it repeatedly; I was giving the distance from Senator Sutherland's store as between 20 and 50 feet.

ALEXANDER LOGAN, being duly sworn, testified as follows:

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Direct examination by Mr. Patterson:

Q. Do you know William Logan?

A. Yes.

Q. Do you know the house where he lived for some years in the city?

A. Yes, I know where he used to live.

Q. Where would you describe it to be?

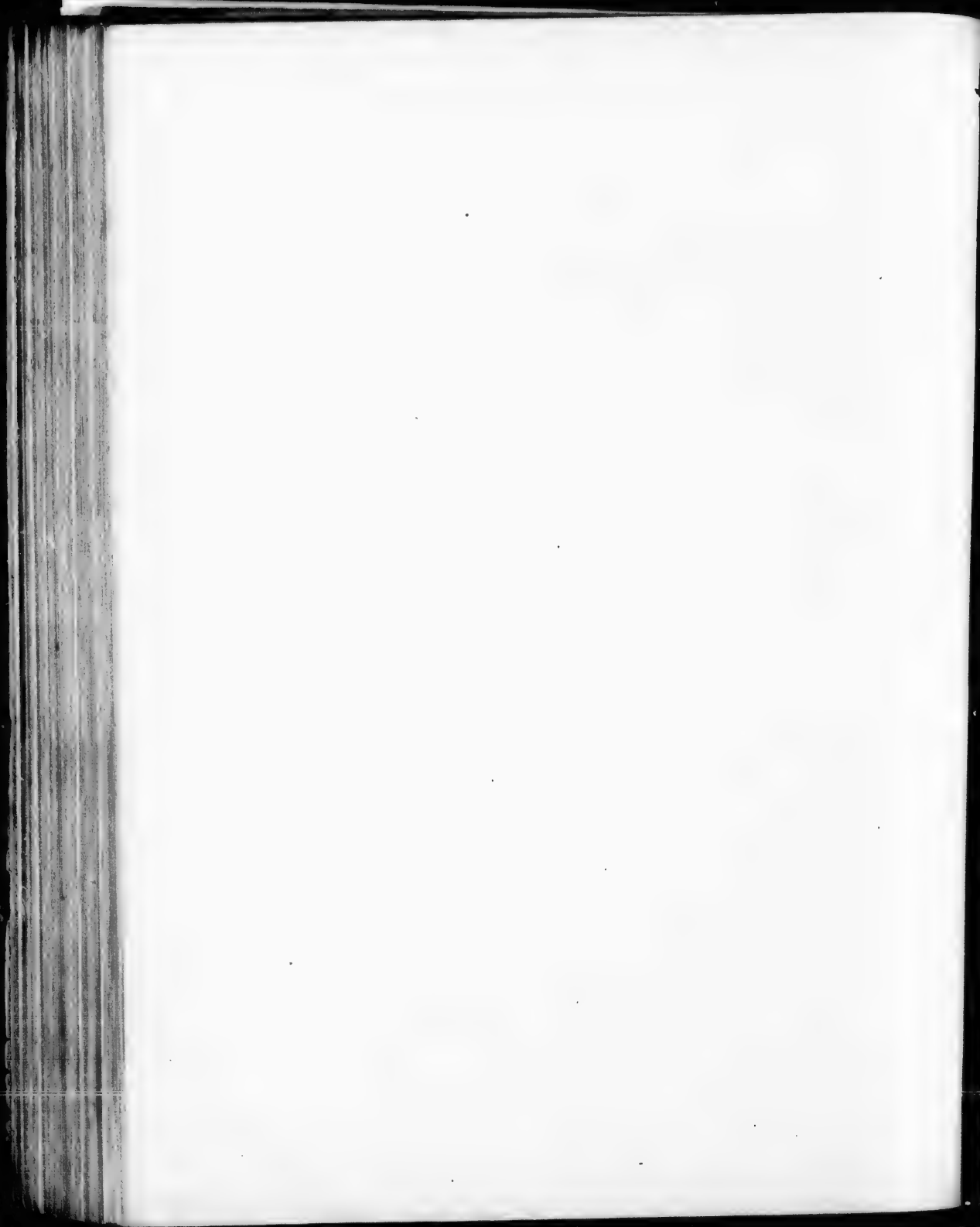
A. On the Common, do you mean? He had a house which he built in the fall of '70 on the Common.

Q. Between what streets?

A. Between Fonseca and Common streets.

Q. On what side of the street?

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A. On the east side.

Q You are familiar with Duncan Sinclair's survey, I suppose; will you look at that and tell us what lots on that survey he lived on? Can you give us descriptions of the lots and the property?

(Witness is shown a plan.)

A. Looks to me his house was on C—I am not sure; but I think it was about the third lot from the corner of Common and Main.

Q. You say he built there in the fall of '70?

A. Yes.

Q. He continued to live there for a number of years?

A. Yes.

Q. Did he put up any other buildings after the first building?

A. He built a log house in the fall of '70 and he afterwards built a house between that and Main street; afterwards, a wing to the north.

Q. Upon which house was the wing built?

A. A wing from the log house towards Fonseca street.

Q. That was the third building, then, was it?

A. Yes, the third building.

Q. Can you tell us what lot that was on?

A. I could not say; I saw the wood on the lot; I would say that the last 20 house that he built would come on about on D.

Q. Can you tell us how much land he used in connection with this building at any time after 1870?

A. I do not remember ever seeing the land fenced in any way but I suppose it would be about a chain or a chain and a half, these buildings covered his stables and all.

Q. What was the next building to the south?

By his Lordship:

Q. What do you mean by a "chain"—square?—What do you mean by "covering a chain and a half"?

A. I never saw him use it for anything else but just a house and a yard as it were; do not remember any fence being put up.

Mr. Patterson:

Q. What was the next building to the south?

A. Barber's store.

Q. What were the nearest buildings in any other direction in 1870?

A. I do not think there were any.

Q. I forget whether you gave us the time when Mr. William Logan built that house?

A. In the fall of 1870.

Q. Do you remember when Mr. Fonseca's store, on the other side of Main street was put up?

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A. In 1871 or 1870; I think he had some logs there in the fall of '70, and he put it up, I think, in 1871.

Q. Could you say positively which was put up first, Logan's small house or Fonseca's store?

A. Logan's house was put up first.

Cross-examination by Mr. Howell:

Q. Mr. Logan, what is the width of C?

A. If I remember right the lots were one chain by two and a half.

Q. What was the size of the log building that Logan first put up?

A. It was, I should say, 15 x 20, or something like that; a frame building 10 was between it and Main street.

Q. And what was the size of it?

A. I should say 25 x 30 or 35.

Q. Now, there was a wing or lean-to, which would you call it, put up to the log building?

A. No, there was quite a building, about the same size as this one.

Q. Well, what would you call it, a wing or a log building?

A. It was a house—a storey and-a-half house.

Q. Running north? A wing that was put up to the north of the log building was attached to the log building was it not?

A. Yes.

Q. And how large was it?

A. I should say about 25 x 30, or something like it.

Q. The wing, you know, was a log building, was it not?

A. I am not sure.

Q. You are not sure whether it was a log or frame?

A. No.

Q. And can you speak as to the size?

A. It was weather-boarded; I do not know what was under it.

Q. This wing was about what size?

A. About 25 x 30.

Q. It would be as much as that?

A. I should think so.

Q. Do you know on what part of C the original log house was put?

A. It was on the back of the lot.

Q. That is away from Main street?

A. Yes; I should say it would be about 50 or 60 feet from Main street.

Q. And how far in that position was it relative to the north and south boundary of C?

A. It seemed to be on the north side of that lot.

Q. Now, Mr. Logan, turning to another question, when was the Pacific Railway extended into Winnipeg—in 1880 or 1881?

A. I am not sure



Q. The bridge—the temporary bridge that was built across the Red River at the foot of Point Douglas—was not built until 1880?

A. I think it was in the winter of 1880, at the foot of Point Douglas Avenue.

Q. Can you not think of the year in some way?

A. In 1879 I went down to the Government about building a bridge. It might have been that year; I am not sure.

Q. Do you mean the winter of '79 and '80?

A. I went down in May and saw the Government.

Q. In May of what year? Of '79?

A. '79.

Q. Are you sure?

A. I think so.

Q. And so you think the temporary bridge was built then?

A. In the winter of '79 and '80.

Q. Now, for a long time there was a good deal of doubt whether the railway bridge should cross the Red River—whether it should be to the north or the south end?

A. Yes.

Q. When it was finally decided that it was to cross at the north end, and 20 that temporary bridge was built, that greatly increased the price of property, did it not?

A. Yes.

Q. And particularly this property in question?

A. Yes.

Q. Until it was decided that the railway bridge should cross at the north end this property was really of very little value, was it not?

A. Not so much as it was afterwards.

Q. Was it really of large value at all?

A. Well, it was. I could get a good price for lots in those days, immediately after the railway was built.

Q. What would the lot be worth before the policy of the railway was settled to come into the city?

A. About four or five hundred dollars. Well, perhaps not down there; I would say about three hundred.

Q. Now, Mr. Logan, the price of property in this city is lower to-day than it has been for the last five or six years, is it not?

A. Yes.

Q. The land in question is worth how much to-day, in your opinion?

A. \$150 to \$200 net, foot frontage.

By Mr. Glass:

Q. At the time the little log house was put up there, Mr. Logan, there was no survey, was there?

A. A survey took place in September, 1870, if I remember right.

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Q. Now, look at that plan. You will see that it was made on the 27th December, 1870; somewhere about that time I suppose?

A. Yes.

Q. You know the corner of Common street?

A. Yes.

Q. You remember Mr. Sutherland's store on that corner?

A. Yes.

Q. Was it right on the corner, that store?

A. It was at or near the corner; I couldn't say how many feet.

Q. On account of this being an open space, I want to get the feet, if I can, 10 on Main street. About how many feet wide would Sutherland's store be?

A. About 25 feet.

Q. What distance would it be between Sutherland's store and Barber's store? You see, this was all an open space at that time and I want to get as near as I can how many feet?

A. I couldn't say.

Q. Was there a gateway in between them?

A. I do not remember. There was an open space.

Q. The store was about 25 feet; how many feet would it be from the store to Barber's store?

A. It may have been about 50 feet.

Q. Then, how many feet wide was Barber's store?

A. It would be 25 or 30 feet.

Q. That is the white house I mean?

A. Yes.

Q. And from Barber's store to the white house, how far to William Logan's? They were quite close together, were they not?

A. No.

Q. Was there a passage between them?

A. There was about three-quarters of a chain between them.

Q. How far between Barber's store and the white house, in feet?

A. It would be about 40, or 40 to 50 feet.

Q. Now, it would be from Barber's store to the white house, 40 or 50 feet. How wide was the white house?

A. About 25 feet.

Q. Now, immediately to the east of the white house, was there another building put up by the Barbers?

A. To the east? Yes, and a little to the north I think, on the other corner by Logan's.

Q. How wide was the little log house?

A. About fifteen feet.

Q. How much of it was over behind the white house, extended on to or past the white house?

A. About five or six feet.

Q. And the balance would go north?

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A. Yes.

Q. Now, had he another building to the east of the little log house?

A. Yes, to the north.

Q. It will be over on to the little log house, too, because you went from one to the other?

A. It was built on to the little log house; you went into the little log house east of that.

Q. The one will be over on the west and the other on the east, and so they cover up the little log house? How wide was that house that you speak of? That was a sort of stable, was it not?

A. It was built as part of the boarding house; William kept a hotel there. 10

Q. How wide was it?

A. About twenty-five feet.

Q. How much of it was over on the little log house?

A. If I remember right it was built on to it; it was built at right angles to the white house.

Q. Then it must have been in front of the little log house instead of behind as it was built to the north?

A. Built on to the log house; my recollection is that it was built to the north of the little log house.

Q. Now, that is your recollection of the whole of the buildings that were there, and there was then between that and where we are an open space? 20

A. Yes, at that time.

Q. And there was no house until you got past the railway track up as far as Barber's store?

A. Going north?

Q. I am talking about Barber's old store from the time you left that building, you speak of going north, there was none near the railway track till you got to Barber's store?

A. No; there was no building between the two except this house of 30 McTavish's, which was east of and away back.

Re-examination.

Mr. Patterson:

Q. You were speaking of the price of property in the neighborhood of these—to what time were you referring when you spoke of the price of lots being about four to five hundred dollars—about what year would you think they would be as low as that?

A. About 1875 or 1878, before the railway was built; it was about that time that prices got up; I sold lots myself on Main street for \$250.

Q. Whereabouts?

A. Near Logan, in 1872 or 1873. 40

Q. Would \$1,300 be too much money paid for forty-two feet frontage on portion of lot C in 1876?

A. That is improved property.

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Q. But that included the building?

A. I think so.

Q. Lot C was north of William Logan's—this white house that you talk of?

A. No, this forty feet had no buildings on it.

Q. Here is a deed dated June, 1876, for ninety-two feet frontage on Main street; the consideration mentioned there is one thousand and fifty dollars; would that be excessive?

A. I do not suppose it would be if Mr. Mercer thought it was worth it, I suppose it was; if I looked at the lots I sold about that time I could tell.

Q. Supposing this lot ninety-two feet on Main street, in 1876, no building 10 on it, the deed says \$1,050?

A. That would not be excessive for a corner lot.

Q. I find mortgages here in 1876; if you saw an original mortgage, dated June, 1876, to secure a loan of \$500 on that ninety-two feet, would you consider that an excessive amount to loan on?

A. No, I don't suppose it was; it would not be excessive for a lot of that size.

Q. The lot that you sold yourself and that you referred to was north—not nearer the city than this—was it not?

A. Yes.

Q. When did you sell these lots that you mention?

A. In 1872 or 1873.

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By Mr. Howell:

Q. It went up considerably in 1876, did it not?

A. Yes.

Q. Did prices go up considerably all over the city in 1879?

A. I don't know that there was much move till it was known that the road was going to cross at Winnipeg.

Q. What I mean to say is this, as soon as it became known that the road was going to cross prices went up all over the city?

A. Yes.

Q. It didn't affect prices at the north end particularly?

A. No, prices went up all over.

Q. This land, lot C, was quite out of the city in '79, was it not—out of the business part of the town?

A. The biggest portion of the business was up in the vicinity of Bannatyne or Portage avenue.

Q. How far would the centre of the business be from C?

A. About half a mile, there was houses getting built.

Q. Now, Mr Logan, the policy of the Government as to bringing the line 40 of the Pacific railway was to cross the Red river at Selkirk, was it not?

A. Yes.

Q. And the general prevailing opinion in the city was that the future of the city would be very much affected if it crossed there?

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Q. And the general prevailing opinion was that the future city would be there if it crossed there?

A. Yes.

Q. And it was not until it was known that the railway was to cross at Winnipeg prices of Winnipeg property went up? Property kept down very much?

A. Yes they didn't amount to much.

Q. That policy was the policy of the Conservative Government, was it not?

A. Yes.

Q. That was the policy of the Conservative Party as differing from the Reform Party that preceded it?

A. Yes.

Q. The Conservative Party did not get into power until after December, 1878?

A. No.

Q. Then for some time after 1878 the Reform Government still held office?

A. They didn't resign immediately; a month or two afterwards.

Q. Well, then, was the policy of the Conservative Government as to changing the policy of the C. P. R. declared as early as 1878?

A. I went down in the spring of 1879 with a petition from the City of 20 Winnipeg to urge the Government to make the crossing at Winnipeg, and to build a bridge and build a branch line to Stonewall.

Q. You urged that and you took down the petition?

A. Yes.

Q. Then, up to the year '79 it was not known that the C. P. R. would cross at Winnipeg?

A. No, we thought they were favorable to it but it was not known.

Q. The whole future of Winnipeg depended on the crossing of the main line being here?

A. Altogether.

Q. And values were affected by that?

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A. Immediately went up.

Q. Now, you went down in May, '79; you got there at that time. Was it even then finally settled that the line would cross at Winnipeg? Did the Government settle it finally with you?

A. Yes, they assured me that they would build a bridge and a branch line running back up to the main line at Selkirk.

Q. They ran past Stonewall, do you know, to the Portage? And that was the first definite arrangement that was come to by which you thought that the C. P. R. would be built at Winnipeg, and prices went up accordingly then?

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A. Yes.

Q. Now, after the principle was settled that the line should come to Winnipeg, what next made a contention between the various property holders as to what part of the City the C. P. R. would enter?

A. Yes.

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Q. It was a bone of contention for quite a long time ?

A. Yes ; north against south and south against north.

Q. Was it not the final settling of the place where the C. P. R. was to enter Winnipeg that affected prices ?

A. Yes, and that was not settled until '80.

Re-examination by Mr. Patterson.

Q. The crossing of the railway at the north end influenced values. Did it make the values of the north end greater than in any other part of the city ?

A. In the immediate vicinity of the railway I think it did.

Q. Then you mean to say that the values at the crossing were greater there 10 than in any other part of Main street ?

A. Greater in proportion to what they were.

Q. But where is the most valuable portion of Main street now, and since the railway crossed ?

A. Between Portage avenue and Market street.

Q. You would get more per foot front there than for any other part of Main street ?

A. Yes.

Q. Now, that is not near the railway is it ?

A. No, that is a good distance south of the railway—about a quarter of a 20 mile I should think.

Q. To Portage avenue ? Would it not be half a mile ?

A. Yes, to Portage avenue it would be near half a mile.

CHARLES KENNEDY being duly sworn, testified as follows :

Direct examination :

Q. You produce the official map of the City of Winnipeg ?

A. Yes.

Q. Prepared by whom ?

A. George McPhillips, junior.

Q. That is on record in the registry office, is it not ?

A. Yes.

Q. He is a land surveyor ?

A. Yes.

Q. How is it certified ?

A. Certified by George McPhillips, being correct ; certified by W. N. Kennedy, being filed in the registry office and as deposited by the City. This is the city seal certified by W. N. Kennedy.

Mr. Howell objects to plan as being a copy.

Mr. Patterson brings the map because there is a difference and because the conveyances, refer to it.

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Mr. Glass also objects.

Document, 19th December, 1876, (Thomas to Schultz), put in.

Original deed, William Logan and wife to Frederick C. Mercer, dated 20th June, 1876.

Original trust deed, John Sutherland, *et al*, dated 15th October, 1872; registered, 12th June, 1873; certified by W. N. Kennedy, registrar.

Q. Is that a certified copy?

A. Yes.

Q. Have you original deed, 28th March, 1876?

No answer.

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Document (Logan to Thomas) dated 26th June, 1873, registered 10th December, 1873. Is that an original, certified by W. N. Kennedy, registrar?

A. Yes

Q. Have you the deed from Thomas to Freeman—David Henry Thomas to John Freeman—dated 13th October, 1874, registered 16th October, 1874?

A. Yes.

Q. Is that an original, certified by John Kennedy, deputy registrar?

A. Yes.

Q. Freeman to Belch, original deed, John Freeman to A. J. Belch, dated 18th August, 1877, and registered 18th August, 1877; No. 500.

Q. Belch to Thomas S. Gray, August 2nd, 1881, registered 6th of August, 1881, No. 3,100.

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Q. Are these last mentioned deeds originals and certified by the registrar?

A. Yes.

Q. Have you the originals with you of any of these instruments?

A. I have the originals of these two.

Q. Have you the original, Joseph Hupé to William Logan?

A. I have a copy made in our registrar's books.

Q. You produce the book with the original record?

A. Yes.

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Mr. Glass objects to this method of proving the deed.

Q. Have you the deed dated 17th October, 1872—Joseph Hupé to William Logan?

A. Yes

Q. Of what lot?

A. It is part of parish lot number twenty-four.

Q. Is this a certified copy?

A. Yes; that is signed by John W. Kennedy, deputy-registrar.

Q. You have the originals of the other two, I understand? Produce original deed—William Logan to Henry McDonald—dated 13th March, 1874; registered 40



18th March, 1874, Hup6 lot, No. 233. Hudson Bay register. Is that an original certified and by whom?

A. Original certified by W. N. Kennedy, registrar.

Q. Henry McDonald to John C. Schultz and Walter Robert Bown, dated 5th July, 1882; registered 6th July, 1882; is that an original, certified by John W. Kennedy?

A. Yes, we put in certified copy.

Q. Is that an abstract of title, certified by W. J. Kennedy?

A. Abstract of D, block 14, dated July 4th, 1883.

Q. This is an abstract of lot E, in block 14; what date and by whom 10 certified?

A. It is up to July 29th, 1882, and signed by John W. Kennedy, deputy-registrar.

By Mr. Howell:

Q. The map that you have just spoken of is a compilation of a lot of maps previously filed, is it not?

A. Yes.

Q. Amongst the others it is a compilation of Exhibit 3, is it not?

A. Yes.

By Mr. Patterson:

Q. How do you know that it is a compilation of others, and these particularly? 20

A. I remember.

Q. Is it the same as Sinclair's map?

A. It includes that; I do not know whether it is the same or not.

Q. You have the original yourself, have you not?

A. Yes.

Q. Now, look at the two, particularly block 14, and see if one is a compilation of the other?

By his Lordship: What is the authority for that map at all?

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By Mr. Patterson:

Q. Eighth of June, 1876; is that the date of the map?

A. Yes.

Q. Twenty-ninth day of July, 1876; is that the date of that?

A. Yes.

Q. That plan is the one described in the patent?

A. Yes.

Q. Now look at the official plan and look at Sinclair's plan and see if this is a compilation from that for the particular land in question here—block 14?

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A. They are both drawn from the scale—one marked in links and the other in feet; they are not exactly the same in all respects; the Sinclair is marked in feet and the other in links.

Q. Now, there are manifestly differences between this plan and Sinclair's plan, and I will try and get the witness to state what the differences are. Are the frontages of the lots the same? Are the sizes of the lots the same in the two plans?

A. No.

Q. Are you well enough skilled in figures to say whether the number of links given there corresponds with the number of feet? Can you run them one 10 into the other?

A. They do not correspond the same.

Q. They are manifestly different?

A. Yes.

Q. Mr. Kennedy, according to the plan which you now produce, D has no measure or size?

A. No, in frontage measurement.

Q. Or a rear measurement?

A. No.

Q. So that you cannot tell its width?

A. No.

Q. You mean that there is no mark on it to show its width?

A. No, you have to go by the scale; there is a scale there to show the width.

Q. What is the scale?

A. Four chains to an inch.

KENNETH McDONALD being duly sworn, testified as follows:

Direct examination:

Q. You live in Winnipeg Mr. McDonald?

A. Yes.

Q. Where did you live up to 1870?

A. In the Red River Settlement.

Q. That is part of where Winnipeg now stands? Are you a son of the late Neil McDonald?

A. Yes.

Q. Was that where you lived prior to 1870?

A. Yes.

Q. You went away in that year?

A. I went away at the end of June, 1870?

Q. You were away considerable time?

A. Yes, I was away twelve years.

Q. Were you far away?

A. I was out at York Factory, and also within the Arctic Circle and east and west of the Rocky Mountains.

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Q. Do you remember what buildings were on Main street, on either side, in the neighborhood of this property of William Logan's at the time you went away?

A. About the time I went away, north of where the City Hall now stands it was waste; Barber's store was not quite finished; there was but one building north of the market, which was a building put up by Barber—I mean put up by E. L. Barber—Edmund; there was only that one building there at the time I went away?

Q. Logan's house was not there nor any other house?

A. No, Logan's house was not up; Barber's building was not finished; I 10 didn't see Logan's house; Logan's house was not in course of erection then.

Q. Was Fonseca's store on the other side of Main street, in the course of erection then?

A. No, there was no other building but Barber's.

By His Lordship:

Q. Barber's appears to have been the first house there?

A. Yes

Mr. Patterson:

Q. Was there any sign of building materials anywhere on the ground for any building?

A. Where?

Q. On the other side of the street, near Barber's?

A. Round Barber's place, north of Barber's house, there was some logs piled but whether they belonged to the house or not I do not know. Some boards were lying around, whether they belonged to Barber's store or anybody else I don't know; I don't know to whom they belonged.

JAMES H. ASHDOWN, being duly sworn, testified as follows:

Direct examination by Mr Patterson:

Q. You live in Winnipeg, Mr. Ashdown?

A. Yes.

Q. How long have you lived in Winnipeg?

A. I have lived in Winnipeg since the year '68.

Q. You know William Logan?

A. I do

Q. Where did he live in 1870?

A. In 1870 he lived within about a block of where the present C. P. R. station stands. I think it was about a block south of that point, on that same side of the street. It was on the corner of the then existing road, striking eastward—I believe the same as now known as Fonseca street.



Q. Was it on the east or west side of Main street ?

A. On the east side.

Q. Do you remember when he went to live there ?

A. I remember that he had a quantity of logs there in March, 1870, immediately after I was released from prison. I was down there and saw him. I was one of Riel's prisoners.

Q. What was the year when you were released ?

A. I think it was in March—March the 10th.

Q. And then you went down ?

A. Went past there.

Q. Immediately after you were released ?

A. Immediately after I was released—I think next day.

Q. And you saw a quantity of what ?

A. Logs—building logs

Q. Was Barber's store there at the time ?

A. I think there was a building a short distance of the south of where the logs lay.

Q. Then afterwards William Logan lived there ? When did he put up his house and go to live there ?

By His Lordship :

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Q. Do you know whether that was known as Barber's, the one a short distance south ?

A. I cannot be sure. I believe it was Barber's.

Q. It was on the east side of the street was it ?

A. On the east side of Main street?—yes; on the south side of the cross street.

By Mr. Patterson :

Q. What time did you say, Mr. Ashdown, that he went there to live ?

A. I didn't say. I believe he went to live there during the latter part of that season. I cannot be sure on that point ?

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His Lordship :

Q. What season do you mean Mr. Ashdown ?

A. I mean the summer season of 1870.

By Mr. Patterson :

Q. What other buildings did Logan put up after that, do you know ?

A. I cannot say.

Q. Do you remember Mr. Fonseca's store on the other side of Main street ? Was it put up ?

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A. I cannot say for certain here. I suppose that would be in 1871.

Q. Could you state positively which building was first, Logan's house or Fonseca's store?

A. I should say positively Logan's store; the building that was put up with the logs that I mentioned.

Cross-examination by Mr. Howell:

Q. Mr. Ashdown would be surprised to know that the building that Logan lived in was more than 200 feet distant from where the logs were piled?

A. The building that he lived in? Yes. The building that he lived in afterwards was more. I should not have thought it was that far, for he lived 10 in the other building. I should have thought that the distance was not more than a hundred feet. The building was put up immediately to the south according to my memory from where the logs were piled and the other building still further to the south, did not exceed a hundred feet in difference.

Q. I asked you how far the house was?

A. I should suppose the building commenced within twenty or thirty feet from where the logs lay and from that southward.

Q. Was the building on the corner?

A. Close to the corner, yes.

Q. The corner that you refer to was made by Main street on the one side, 20 and of what on the other?

A. By the street running towards the river on the other, I do not know its name.

Q. How far was the building situate from that street running to the river?

A. I should not think it would exceed a hundred feet.

Q. On which side of the house was the street then running to the river on the north. Give me an idea what distance you think was between the cross streets and the north part of the building?

A. I should not think that the north part of the building would be more 30 than one hundred feet. I should not have thought it was more than sixty. It would be more than sixty and probably under a hundred.

Q. Fonseca at that time was living on the homestead north of the river?

A. Yes.

Q. He had several acres there had he not?

A. I believe so.

Q. And Fonseca was living there before the transfer?

A. He was.

Q. Fonseca had a store down there had he not?

A. He had.

Q. He had a store there on the property that he was living upon?

A. Yes.

Q. And that store was there at the time of the transfer?

A. It was.

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Q. He also had stables and outbuildings had he not ?

A. I believe so.

Q. Fonseca's place was about east of this land was it not ?

A. Southeast.

Q. Now, Mr. Ashdown did you ever get a patent for any land under the Manitoba Act in this country ? —You know what I mean by this—that is land you were in possession of, or which you claimed before 15th July, 1870 ?

A. I think I got a patent for a piece of Point Douglas Common, since within the last two or three years, that is a portion of that which is in dispute.

Q. Did you ever get a patent for any portion of a river lot ?

A. Yes, in connection with the Rev. George Hamilton.

Q. You claimed under the Manitoba Act. did you not ?

A. Yes.

Q. In what Parish was that ?

A. In the Parish of St. Jean Baptiste.

Q. And you claimed because you were in possession, or others through whom you claimed were in possession before the transfer ?

A. Those from whom I claimed.

Q. Now in order to get a patent from the Manitoba Act, what possession did you require to prove that you had the whole lot enclosed ?

A. No.

Q. What did you have to prove ?

A. I think simply that the party through whom I claimed was in possession.

Q. In what way ?

A. By occupancy I think.

Q. In having the whole lot enclosed or having a little patch ?

A. The papers were made out by Mr. Bain, of Bain & Blanchard—I think it simply meant in occupation.

Q. But how in occupation ?—You see Mr. Ashdown you can be in 30 occupation after having the whole lot enclosed or having a little patch in the corner.

A. In this case there was not over ten acres enclosed out of the eighty acres claimed.

Q. And you got the patent for the whole of it under the Manitoba Act ?

A. Yes.

Q. Now you were there before the transfer and you know what kind of possession these people had who had got patents before they were in possession. Is not a fact that these persons who were in possession by simply perhaps having a shanty, a little house, on a lot and perhaps not a foot cultivated, or a 40 field enclosed.—Did not they get a patent even for as much as two hundred acres ?

A. I do not know. —I know some cases where they were refused, as for instance, McPherson and some others on the Hudson's Bay Reserve.

Q. I am not speaking of the City—I am not speaking of the Hudson's Bay Reserve, but in all cases under the Manitoba Act—patents were granted in all



cases where there was no application from the Hudson's Bay Company. Was not all the possession they required simply a little shanty as it were?

A. I do not think I would be good evidence on that, I know there was a good many claimed in that way, but I don't know how they came out.

Q. In the case Mr. Ashdown where you got the patent for eighty odd acres did you have enclosed the whole of your frontage or only part of it?

A. I enclosed the whole frontage.

Q. And you got the full depth two miles back allowed you?

A. Yes, and the other two miles as well.

Q. So you got four miles. Well, what remained out of the survey?

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A. In that case it was perhaps two and a half miles.

Re-examined by Mr. Patterson

Q. I suppose that did not apply to land, except those lots having river frontage—those going back to two miles for possession of a little piece on the front?

A. No; that was only within the river bank.

Q. It did not apply to any lands south except those that had river fronts?

A. I think not.

Q. Do you know the reason why they granted two miles back in cases of lots having river frontage?

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A. It was to carry out the original understanding between the Hudson's Bay Company and the settlers.

Q. What was that—what was the understanding?

Mr. Howell objects to this question.

Objection allowed

Q. About what was the distance of Mr. Fonseca's homestead and its enclosures from the property in question here, where Logan lived?

A. I should say that from Fonseca's residence, it would be four or five hundred feet; I should say at least five hundred feet on the Main street. The old building still stands east of Main street.

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By His Lordship: I suppose this building would be between six and seven hundred feet? The building would be south and east? The two buildings would stand south-east and north-west.

Cross-examined by Mr. Howell.

Q. Would you be surprised to know that a man got title under the Manitoba Act although he had never had a common agreement at all with the Hudson's Bay Company?

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A. No; I believe that the settlers at Portage la Prairie and perhaps some distance east of them do so. The Hudson's Bay Company, I understand, refused to give them the title, and yet they got title under the Manitoba Act because they were in possession.

Q. Did you ever know any person that got the title under the Manitoba Act except those that were living on the river?

A. No; I understand that they were in undisputed possession.

Q. Well, had they got title for only the piece they enclosed, or for a larger extent?

A. I believe they got it for a larger extent.

Q. I understand that all who were in undisputed possession—all that were on the river—would get a title under the Manitoba Act for the land they enclosed and for a larger amount?

A. Usually for a larger amount than they had enclosed.

ADMISSIONS.

It is admitted that evidence need not be called to prove that John Schultz is too ill to attend, and that his evidence may be read subject to the objections as to its admissibility.

JOHN ECCLES, being duly sworn, testifies as follows:

By Mr. Patterson.

Q. You live in Winnipeg, Mr. Eccles?

A. I do.

Q. How long?

A. Since '58.

Q. Do you know William Logan?

A. I do.

Q. Did you know him in 1870?

A. I did.

Q. Where was he living then?

A. Point Douglas.

Q. Whereabouts on Main street? Describe the location as closely as you can?

A. Between the side of Common and Fonseca streets, on Main street.

Q. On what side of Main street?

A. On the east side.

Q. Main street was then known as the main highway to Lower Fort Garry? How long had Main street been laid out as a highway?

A. I could not say; it had been a main highway from the time I came into the country, and for some time before.

Q. About how wide was it?

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A. Well, it was pretty hard to describe the width ; the roads then went wherever they could find green grass to keep out of the mud.

Q. So that it took up a good deal of ground ?

A. I guess it was then some five chains wide.

Q. When did William Logan go to live in that place ?

A. As far as my recollection serves me, it was in the spring of 1870. He was there early in the spring of 1870.

Q. What did he go to live in then ?

A. He built in 1-69 and went there in 1870, or in the spring of 1870.

Q. What house do you mean that Logan built ?

A. A small house, about 12 x 14, on the east side of the highway.

Q. On the east side of the highway, is it ?

A. Yes.

Q. Did he make any other improvements to that first house ?

A. Yes ; he built another house the year following or two years following.

Q. Is that all ?

A. No, he built a third house after that to the north of the second one. The second one was between the first house and what is now Main street, and the third house was to the north of that—north of the first.

Q. Well, then the Common was held in common by the Point holders, and 20 Fonseca was not using any portion of the Common except the piece where his house is ?

A. No.

Q. Do you remember when his store was built on the west side of Main street ?

A. It was during the summer in 1871.

Cross-examined.

Mr. Howell.

Q. Now, Mr. Eccles you have just sworn that Fonseca, at the time of the transfer, had only half an acre enclosed ?

A. Yes.

Q. Now didn't you say that he had more than half an acre from Neil McDonald enclosed ?

A. I had nothing to do with it, sir.

Q. How much had Fonseca enclosed at the time of the transfer ?

A. I do not know that he had anything enclosed except where his stable was and for his house.

Q. I asked you how much Fonseca had enclosed at the time of the transfer? You have sworn to half an acre and I want to know whether that is true or not—how much land had he enclosed where he lived ?

A. Half an acre.

Q. Can you pledge your oath to that ?

A. I have.



Q. And you swear that you do not know that he had ever seven acres bought from Neil McDonald enclosed?

A. Not at that time.

Q. He didn't buy it till afterwards?

A. I could not say—he may have or may not.

Q. He may have had a field from two or three acres enclosed, and you didn't know it?

A. That is all he had then.

Q. Where was his store?

A. His store was just inside the trees, about twenty yards probably further 10 west than where his house now is.

Q. Was his store in an enclosed field or not?

A. No, sir.

Q. You swear to that—you didn't have to get over a fence or open a gate to get into the store?

A. No, sir.

Q. Now, there is no doubt about the truth of that?

A. No, sir, I never had

Q. Now, you have sworn that Logan built this house in 1869?

A. Yes, sir.

Q. Are you aware that Kenneth McDonald swore that there was no 20 building put up there in 1870, when he left for the north?

A. I don't know.

Q. If he swore that, in your belief, that is untrue?

A. Yes

Q. Mr. Alexander Logan swore that there was no building until the latter part of '70, was that true or not?

A. No, sir, it is not true, there was a building there built by William Logan in 1870—it was built in '69—it was there in '70.

Q. And you swear that the same building was there in '70 that was built 30 in '69?

A. Was commenced—I won't swear it was finished.

Q. Now, Mr. Ashdown has sworn that the logs were there in 1870. What do you swear to that?

A. I swear that he was not there in the spring of 1870.

Q. And Mr. Ashdown has sworn to what was untrue?

A. I did not say so.

Q. Mr. Ashdown says there was no building there when he got out of jail. Is that true or not?

A. I cannot say. I cannot say what Mr. Ashdown—I say there was a 40 building there in 1870.

Q. And Mr. Ashdown swore to what was untrue?

A. I didn't say so.

Q. Mr. Ashdown swore that Mr. Logan had not the building there in 1870?

A. I say he had.

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Q. Did Mr. Ashdown swear to what was untrue?

A. I didn't say that he swore to what was untrue.

Q. Did Mr. Ashdown tell the fact when he said there was no building there in the spring of 1870? Did he tell the truth then?

A. He may have to the best of his belief.

Q. Was it true?

A. I said before.

Q. Answer my question. Was it true what Mr. Ashdown said, that there was no building there in the spring of 1870?

A. I believe—

Q. Answer that question, sir. Was that true?

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A. I say that there was a building there.

Q. Answer my question, sir. When Mr. Ashdown said there was no building there in the spring of 1870, was that true or not?

A. I have not heard Mr. Ashdown's evidence. I say he was there. I say that—

Q. Answer my question.

By His Lordship: Do you say that Mr. Ashdown, in swearing to that, swears to what was untrue, supposing that Mr. Ashdown has sworn that there was no building there in 1870?

A. That was not true.

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By Mr. Howell:

Q. Now, every witness has sworn that Mr. Fonseca had a good many acres enclosed. Did Mr. Fonseca have a good many acres enclosed on his homestead at the time of the transfer?

A. He did not, sir.

Q. Did he have enclosed near where he lived nearly half an acre?

A. To the best of my belief.

Q. How much land did he buy from Neil McDonald?

A. I don't know how much he bought.

Q. As much as two or three acres?

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A. Probably there was that.

Q. Was that enclosed at the time of the transfer?

A. Yes.

Q. How far was that from the house?

A. That came right up to the trees.

Q. You have sworn that he did not fence next his house more than half an acre?

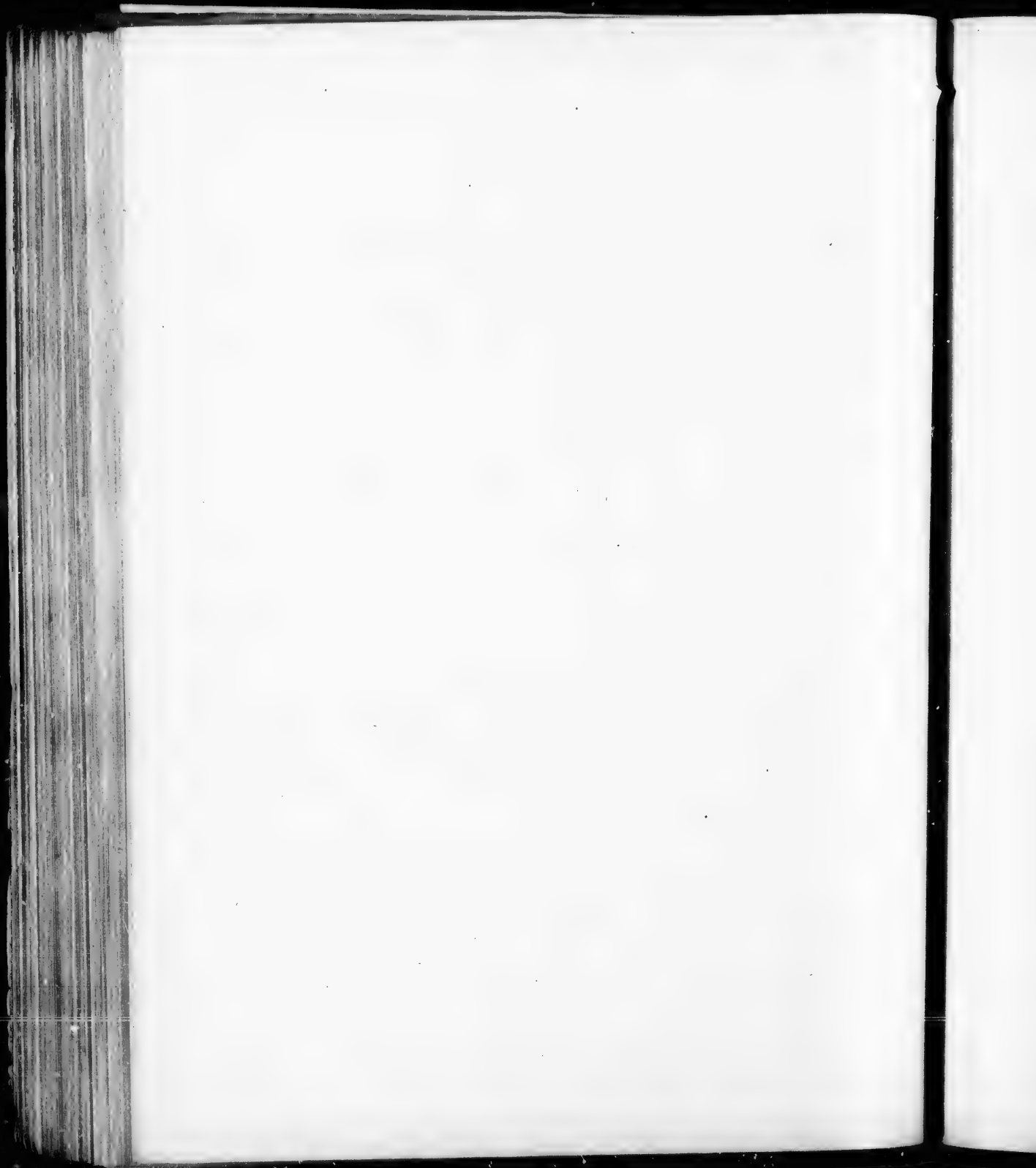
A. Yes.

Q. You swear that he was in possession at that time? And you believe 40 he was not—

A. I did not.

Q. You better brace up, now, and go further.

A. I do not know. I cannot claim that he was there.



Q Mr. Logan swears that he had a large piece enclosed—What do you think of that? Would you choke down that?

A. No, I would not.

Q. Do you think he might have a large amount enclosed?

A. Well, to the best of my belief he may have. That was not included in the McDonald property. That part that he bought from Neil McDonald was not included in the Common.

Q. Now, sir, you are wrong there again. Now, sir, was that piece that he bought from Neil McDonald—

A. It was not.

Q. Was it or was it not a part of the Hudson Bay Survey lot 244?

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A. No, that was part of McDonald's homestead.

Q. Was that piece of land that he bought from Neil McDonald part of the Hudson Bay lot 244?

A. No, sir, to the best of my belief.

Q. Would you be astonished if I told you that the whole of Neil McDonald's lot was part of the Common, according to the Hudson's Bay Survey, and this piece that he bought from Neil McDonald—this number 244?

A. No, that was Neil McDonald's private property.

Q. I want you to repeat it again. The piece of land that he bought from 20 Neil McDonald was not a part of 244?

A. Not to my knowledge.

Q. You have sworn positively?

A. I beg your pardon; I said it was part of Neil McDonald's estate.

Q. How could it be part of the Common if it was Neil McDonald's estate? Brace right up and say it was part of the Common.

A. No, I won't do that. What I state, my Lord, is that it was part of Neil McDonald's estate.

Q. Was that part of the Common?

A. Not that I am aware of. He was one of the proprietors—holders—of 30 the Common.

Q. Now, sir, was that part of land that Fonseca bought from Neil McDonald ever a part of the Common?

A. I cannot say. I do not know the number of Neil McDonald's lot. It joined upon it.

Q. Answer my question. Was it a part of the Common?

A. I don't know, sir

Q. That is as close as you will go on that?

A. Yes

Q. Now, on the Common Fonseca had a house, had he not?

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A. Yes

Q. In which he lived at the time of the transfer?

A. Yes.

Q. He had a store?

A. Yes.

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Q. On the Common?

A. No, it was on the property of McDonald's.

Q. And yet, sir, you swear to me that you didn't know he was in possession at the time of the transfer?

A. No, I didn't know.

Q. Then you didn't know he was in possession of this store?

A. Yes I do, he had got permission to build on that piece of land.

Q. What building did Fonseca have on the Common at the time of the transfer?

A. He had a dwelling house.

Q. Anything else?

A. House and stable, that is all.

Q. He had no other out buildings?

A. No doubt about that.

Q. And his store was where?

A. About twenty yards from his house.

Q. On what piece of land?

A. On the piece that belonged to Neil McDonald.

Q. But you were not aware—you didn't know that Fonseca, at the time of the transfer, was in possession of the land that he bought from Neil McDonald? 20

A. I do not know.

Q. Although he had a store on it?

A. I do not know.

Q. You do not know whether he was in possession of that corner or not, and you do not know whether he was in possession of any part of it?

A. No, or any part of it.

Q. How could he have a store there if he was not in possession of any part of it?

A. He may have got permission to build.

Q. It was standing on the ground?

A. Well, I suppose it was.

Q. Then he was in possession of part of the piece of land that he bought from Neil McDonald?

A. I do not know that he bought it?

Q. That he got then?

A. Yes.

Q. Yet you have contradicted yourself and admitted that Fonseca was in possession of a part of the piece of land at the time of the transfer?

A. I admit that of course.

Q. He had a store there and he directed it?

A. Yes.

Q. Well, he must have been in possession when he had a building there? How long had Mr. Fonseca been in possession of the Common or the piece of the Common that he occupied?

A. I do not know—I suppose probably he may have built there in 1862 or 1863. I couldn't tell you the exact date.

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Q. When did he build his store?

A. I don't know, sir.

Q. And yet you are the man who speaks so accurately or exactly?

A. Perhaps he never built it.

Q. No, I don't suppose he did, somebody built it for him. When did you come to this country?

A. Who, sir?

Q. You?

A. In September, 1858

Q. And you do not know when Fonseca got that store?

A. No, sir, I do not know.

Q. He may have had it one year before the transfer for all you know?

A. For all I know.

Q. You swear to that?

A. Oh, he had it more than one.

Q. One or ten for all you know?

A. Oh, he had it more than one. No, he had it not ten.

Q. How do you manage to fix that?—had he it fifteen—had he it five?

A. He may have, I don't think so

Q. Had he it two?

A. I don't know.

Q. You are not quite so accurate as when you began. When did Fonseca put that row of trees there?

A. He never put any trees there.

Q. Who did?

A. Mr. Logan. He had them planted. Mr. Logan put a lot of trees between Neil McDonald's lot and Fonseca's.

Q. When did he put them there?

A. It was his property, it went to him.

Q. Logan owned the property where Fonseca is?

A. No.

Q. What did he own?

A. Up to the trees.

Q. That is he owned the land that Neil McDonald had?

A. Yes.

Q. There is no doubt about that now?

A. No, I say that. I cannot give you the date there was an exchange made, and Mr. Logan didn't sell that land to Mr. Neil McDonald and not Fonseca.

Q. How do you know?

A. I asked Mr. Logan himself, and he told me that he had exchanged it.

Q. With Mr. McDonald? When did he tell you that Mr. Fonseca got the title from Mr. Logan, a paper or deed?

A. He never told me.

Q. Now, you were a witness in the former case, you know what you swore to there is true?

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A. I suppose so.

Q. Did you swear in the other suit that Fonseca was in possession of several acres at the time of the transfer?

A. No.

Q. If you swore to it would it be true?

A. No, sir, not to my knowledge. If I swore that it was not true.

Q. Where were you in July, 1870?—just brace up now.

A. I don't know where I was, I was in Winnipeg I think—I was in the Province of Manitoba.

Q. Were you in the City of Winnipeg, or the place next in the vicinity of 10 Winnipeg?

A. What do you mean by the vicinity of Winnipeg?—how close?

Q. In July, 1870, where were you?

A. I won't be positive where I was, in St. Norbert or in the City.

Q. Where were you between July, 1870, and the time the prisoners were let out of confinement here?

A. Sometimes in Kildonan, sometimes in St. Paul's Parish, and sometimes in Winnipeg.

Q. Where did you live when you were in Winnipeg?

A. Sometimes with Mr. Barber, sometimes with Mr. Fonseca, sometimes 20 Mr. Logan.

Q. Now, William Logan has sworn that he put up that house of his in September, 1870, and that it only took him a week to do it and that he went into it immediately, are you prepared to contradict Mr. Logan?

A. He may be correct but he may not be correct—I have sworn to the best of my knowledge and belief.

Q. Oh, but you know you contradicted Mr. Ashdown. Now, how long after William Logan put up his house was it that Fonseca enclosed the larger piece?

A. I could not say.

Q. How is it you speak so positively about that time, but cannot speak about anything afterwards? 80

A. I don't know.

Q. Well, you swore to half an acre before, was that true? How much of the Common had Fonseca enclosed in July, 1870?

A. I do not know that he had any more than what was around his stable for an enclosure for the cow yard and hay yard.

Q. How much land had he enclosed? I ask you how much is that?

A. It would not be more than half an acre.

Q. And that would be round the stable?

A. Yes.

Q. And you do not now refer to the Niel McDonald land? 40

A. No.

Q. Did you see that place in July, 1870?

A. I did a good many times.

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Q. How do you know. Now you have already sworn that?

A. I would be coming down probably backwards and forwards

Q. Where did you live when you came to Winnipeg during that year?

A. Sometimes with Mr. Logan, sometimes with Mr. Barber, sometimes with

Mr. Fonseca.

Q. Will you swear that you were in Winnipeg at all in July, 1870?

A. Certainly I was.

Q. You have already sworn that you didn't know whether you were in Winnipeg or in St. Norbert. Now, you swear that you were backwards and forwards? Where were you on the 15th July, 1870?

No answer.

Q. Where were you on the 1st?

No answer.

Q. Where were you between the 1st and 2nd?

A. I don't know.

Q. Why then do you swear that you were in Winnipeg?

A. I cannot say that I was in Winnipeg nor in St. Norbert.

Q. What was your occupation?

A. I was farming at St. Norbert.

Q. During what year?

A. No, I make a mistake, I had Mr. Fonseca's farm then.

Q. Where was that farm? On Point Douglas?

A. I cannot recollect what year.

Q. You state that you remember so particularly about this building, and you cannot recollect to a year what you were doing; does it not strike you as just a little strange?

A. Certain things I can recollect distinctly.

Q. Now, sir, were you farming in St. Norbert in the year 1870?

A. No, I think I was at Fonseca's in 1870.

Q. When did you farm in St. Norbert?

A. In 1871.

Q. Fonseca had several lots on the Point had he not?

A. He had one.

Q. Has he not more than one?

A. One is all that I know at that time. He may have had several after.

Q. Shortly afterwards or long afterwards?

A. Some time after.

Q. Well, now, we have got this distinct that the year that Logan built his house, was it the year or the year before that you had Fonseca's farm?

A. It was.

Q. Was it the year that William Logan built his house, or was it the year before or the year after?

A. He was in it that spring.

Q. The spring that you had Fonseca's farm?

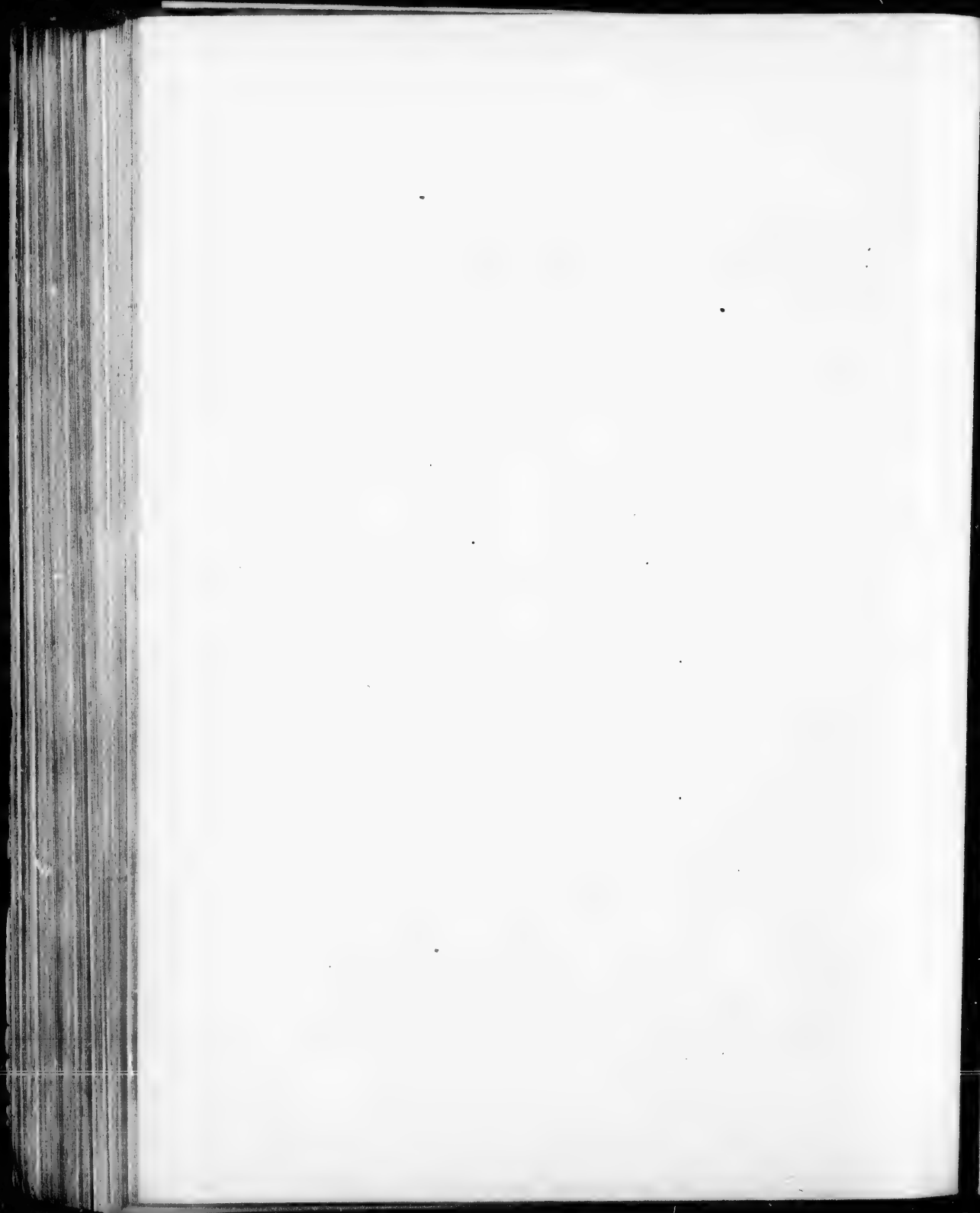
A. Yes.

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Q. He was in it the whole summer of the year you had Fonseca's farm was he? Is that so?

A. I cannot bring it to my mind. To the best of my knowledge and belief it was in 1870 that I had Fonseca's farm.

Q. I am asking you if you had Fonseca's farm the summer in which Logan lived the whole summer in his house?

A. No sir, no I did not. It must have been in 1869 that I had Fonseca's farm; because Mr. Logan was living down at Mr. Barber's at that time.—That was in 1869.

Q. Then in 1869 you had Fonseca's farm, and in '70 you were farming at 10 St. Norbert?

A. In 1871 I was in St. Norbert.

Q. Where were you in 1870?

A. I was all over, here and there for Fonseca, Barber and the old Mr. Logan.

Q. Now you have already sworn that you had?

A. No, I had it a year after.

Q. Now which part of your evidence is true?

A. It was in 1869 I had Fonseca's farm.

Q. How do you fix 1869?

A. Because it was the year before the rebellion. Of course it was in the 20 winter time the rebellion, and I was living in a house at that time, down in a house of Fonseca's on the Point.

Q. Where were you in July, 1870?

A. I could not place it - I was everywhere.

Q. You swore once before that you thought you were in St. Norbert?

A. I was backwards and forwards—my wife was up there at the time—part of the time and part of the time down here.

Q. When were you in Portage la Prairie?

A. I was not in Portage la Prairie at all.

Q. When were you in Headingly?

A. In the spring of 1870.

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Q. What were you doing there?

A. Getting out of the way, Riel was after me.

Q. What were you doing in St. Norbert?

A. Visiting a family.

Q. That was the hotbed of the rebellion? and you kept the family there?

Q. What time of the year were you in St. Norbert?

A. Backwards and forwards, visiting occasionally—could not give any date.

Q. You were not travelling along the main highway very much then?

A. No sir, kept out of the way.

Q. When was it you began to show yourself after?

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A. After the troops arrived.

Q. When did the troops arrive?

A. In the spring of 1870.

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Q. Now sir, would you be awfully surprised that I should tell you the troops arrived in August. You see, in order to tell a good story you should be accurate about it. Will you swear that the troops arrived before the 26th August, 1870? We have some date fixed, you know.

A. I recollect it now—

Q. Then you were not seen around the highway from the winter until August?

A. I was working at the time. I was working for Fonseca and Barber during the whole time that the rebellion was on?

Q. And Riel was hunting for you?

A. Not then; he was in the spring.

Q. So you kept out of the way till the troops arrived? Is that true?

A. It was a mistake.

THOMAS SIMON GRAY, being duly sworn, testified as follows:

Direct examination by Mr Patterson:

Q. You live in Winnipeg?

A. Yes.

Q. How long have you lived there?

A. Since the early part of June, 1871

Q. Do you know William Logan?

A. I do.

Q. How long have you known him?

A. A very short time after we came to Winnipeg.

Q. Do you know the house where he lived?

A. I do.

Q. How soon after you arrived in Winnipeg did you know that house?

A. I would not be positive as to that. It was a very short time.

Q. How many buildings were there of his at that time?

A. Mr. John Sutherland was building his.

Q. I mean how many buildings of Logan's were there at that time, when 30 you first noticed it?

A. I do not see any change here excepting in the dilapidated state and going down of some of them.

Q. The old building is in the same place, then?

A. He always lived there until he left there to go to his farm.

Q. Did you make any measurement of distances lately?

A. Yes, at your suggestion I did.

Q. What is the distance, according to your measurement, from the south end of Logan's building to Barber's store? Did you know where Barber's store was situated in the old days?

A. Yes. It was very difficult to arrive at a very accurate measurement. I do not know that I am exactly right now, but the nearest that I could get—

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the nearest point to Logan's building and Barber's store, according to our measurement, seems to be about fifty to fifty-four feet, more or less, as near as we could make it, and an inch or something.

Q Do you know exactly where Barber's store was situated?

A. Well, I think so, I have often been in it.

Q. You have been familiar with the ground?

A. Oh, yes. It was indeed a very few days that I got acquainted with Barber out of his store.

Q. And you say then from the south end of Logan's building to the north end of Barber's store—the old store—was about how far?

A. Our measurement is from fifty to fifty-four feet one inch.

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Q. When did you measure it?

A. Measured it yesterday—I mean Saturday.

Q. Was there anyone with you when you measured it?

A. There was—one Sutherland, I think Alexander Sutherland, I am not sure.

Q. How did you measure it?

A. We measured it with a tape line, as near as we could measure, or as I think anybody else could with such an instrument.

Q. Do you know where Barber's old store was—the old building?

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A. I think so. I have often been in it, and seen it almost every day since I have been in Winnipeg. I think I ought to know it.

Q. You were interested in the property there?

A. I believe so.

Q. You told us that you owned some property between Logan's house and Barber's store?

A. Yes.

Q. How much land did you own between Logan's house and Barber's store?

A. I bought and paid for forty feet frontage on Main street, extending back to where to C and F to Austin street.

Q. Was that between Logan's building and Barber's store?

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A. Between Logan's building and Barber's store.

Q. Did it take up the whole distance?

A. There was a few feet between the lots C and D from Barber's store, not quite precisely in the line.

Q. That is the old store, because the store was not on the edge of the lot?

A. It was a few feet in; that is, the whole distance from the store, touching the building across is fifty to fifty-four feet.

Q. What was the seven feet, five inches—where was that?

A. We measured from the old wall of Barber's store to the new wall that I 40 caused to be put up seven feet, five inches.

Q. That is from here or south of the line?

A. Yes, to the wall of his store from one wall to the other. That was not on Main street, though it was back a piece, about opposite to the old house—then I knew that—the portion that I bought was forty feet. We didn't, of course,



measure, we estimated that forty and measured the other, which was seven feet five inches, and then the distance from the line to Logan's house; but there used to be another porch to the house that would have brought me round as it were, but that is torn down now. It would not be fifty feet of our measurement had that not been taken down, but the way we found it that was the nearest we could find it.

Q. If the old porch had been up, the distance would have been about six feet less?

A. Well, the two lines would come together. A man could not pass between this porch and my old building, but now there is a space of about six 10 feet or more since this has been taken away. I may say that Saturday, when we were measuring it, I may say that this is the first time I ever knew that that was removed.

Q. You mean the porch?

A. Yes.

Q. Is Barber's old store there yet?

A. I think so.

Q. Just as it was?

A. Well, no, not as it was. Kind of in between the buildings. It is very difficult, unless you go the rear way, to see it at all. Not exactly covered up, 20 but it is covered on three sides. The old store had not been out to the sidewalk and two sides has been filled in from Main street. You cannot see the old store till you have gone in the rear way to see that it is there.

Q. How did you make the measurements with Mr. Sutherland?

A. He held one end and I held the other.

Q. Did you make any other measurements on that property?

A. No other distance. Oh, yes; from the north end of Logan's house we measured Fonseca street.

Q. Which house do you mean?

A. The far end of Logan's house—the north end of his house.

Q. Well, but he had two or three houses.

A. But they were all connected.

Q. You mean the north end of all the buildings?

A. Well, we didn't measure to the nearest part that we could get, but from where we did measure, of course Fonseca's is not an even building. It kind of jogs out, and the distance as we measured it was sixty feet.

Q. The northerly end of the most northerly end of Logan's?

A. Yes—to Fonseca street.

Q. Did you run parallel to Main street?

A. As well as we could. I do not think it could be measured with a tape 40 line any more accurately than we did. The sixty-six feet didn't quite come up to the sidewalk, but we supposed that that would place the line just about where the sixty-six feet came to.

Q. Fonseca street does not cut its right angles to Main street, does it?

A. It is not a right angle.

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Q. What kind of an angle is it?

A. I cannot exactly describe it. I would like to describe how we measured, on the plan, if it is any use.

Q. Well, do so. (Shows witness plan.)

A. (Witness points out C, D, E and F.) This is Fonseca street, as I said. The street went out so that when the weather came along a tape line didn't go quite up to the sidewalk, but we thought that if it came in line with the building that would be about right.

Q. How near the sidewalk did you run?

A. If you went up to the sidewalk it might have been a foot and a half or 10 so more, but we supposed that the sidewalk not being in line with the house exactly, that to put it in line that distance was shown. If it was measured from the far side, near to the Main street house, it might perhaps be less than that. We may not be exactly right. It is not likely we are, but this is as near as we can be.

Q. Were there any obstacles?

A. Not where we ran it; but we would have preferred running it nearer Main street if these things were not in the way.

Q. When did you become interested in that property—when did you buy?

A. 1880 or 1881, I don't remember exactly. I would not be positive to the 20 date, really.

Q. What was your forty feet?

A. It was the most southern portion of lots C and F.

Q. Do you know when Mr. Fonseca put a fence round his homestead?

A. I think so.

Q. Do you know anything about it?

A. I sold him the material that went a long way towards it.

Q. But he says that was after you came to the country?

A. Oh, that's not long ago. If I had my book here I could show you the date, because I sold him the stuff on credit. It was a long time after that 30 before he paid me.

Q. It is not a long time ago at all events?

A. No.

Q. What size was his homestead?

A. Very small portion indeed, it may have been fenced some time ago but the fence was so fallen down and dilapidated that it was no fence at all. I did a very small portion; it might be half an acre, including the large piece over from his house to Fonseca street there may have been about some three or four acres, two and a half to three acres, I forget, it is not long ago that that fence was put there before.

Q. He will have say a fence from Fonseca to his house?

A. Not in that new portion. A small lump of a garden around his house was kind of fenced.

Q. A portion fenced around his homestead you mean?

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A. Well, this house might be said to be inside the first little enclosure; I would not be positive about his stable, I think it was included in it too but that was hardly from that to Fonseca street.

Q. What was the extent now, as nearly as you can tell of his first enclosure?

A. It may have been half an acre, it was somewhere in that neighborhood.

Q. Well, you have seen that fenced?

A. Yes.

Q. And you say it got dilapidated, that is the first fence?

A. You might say it was not a fence at all, I believe there was a fence over out of the Common among the bushes.

Q. Can you give us any idea about the amount of land enclosed by this new fence? 10

A. The present enclosure would seem to be in the neighborhood of two and a half to three acres on the Point Douglas Common. Of course what he had further back outside I am not speaking of.

Q. So this portion, that you sold the material for to fence, was fenced before?

A. I do not think so, it was not fenced at that time. It may have been fenced before I came to the country.

Q. Was there any sign of its being fenced up to the time you came to the 20 country.

A. Not up to the time I sold the material.

Q. When did you sell the fence posts?

A. If I had my book I could tell you the very day, which is about '79 or 1880 or something like that.

Q. Can you tell us how much land around this building of Logan's he used?

A. I do not know how much it was. I do not know that I can answer that definitely. He was building on the whole. His buildings are apparently on C, partly on D and partly on E and partly on F. His original buildings are 30 on several, partly on a line with the four lots; part of his buildings will be on lot C, I don't know how much on the other I am sure, but it is on a line and the stable back in the rear would seem to be on a line with E and F.

Q. Was there any one else using any portion of lot D but Logan, and those claiming from him, using it?

A. No; all the four lots until recently—

Cross-examined by Mr. Howell:

Q. Now, you say (showing witness plan, Exhibit 3) according to this plan Logan's house was about twenty feet on C and the rest of it was on D. In other words, then, Logan's house occupied twenty feet of the southern part of 40 C?

A. Of the southern?

Q. The northern part of C.



A. It occupied twenty feet of the northern part of C, according to this plan, exclusive of that portion, I mean, that has been removed—that porch. That would make it about six feet more.

Q. You mean that there was twenty feet of the main building on C, and the porch also.

A. Yes.

Q. Now, what was the shape of the piece of ground on the Common occupied by Fonseca when you came here?

A. Well, it was a small enclosure. I have no doubt that you have often seen it around his house and stable. I am not sure that the stable was inside 10 of it. If not, it was near it, close to the outside. It was only a very small portion, perhaps half an acre.

Q. I am asking you what shape?

A. It is very difficult for me to describe that. I could not give a description of it.

Q. One witness just swore that Mr. Fonseca had a fence around his stable only, and not around his house. Now you swear that his house was fenced.

A. I would not be sure that there was anything enclosed, but at all events there was the remains of a fence.

Q. Well, it is a very small portion, but how can you describe it?

A. I could not do it if you were to hang me for it.

Q. Well, Mr. Fonseca then, sir, says he had not.

A. As near as I can find, that is before I came to the country, William Logan built that store; I believe he did. He was about moving out of it and moving into a store that he was building on Main street

Q. That was in 1871?

A. Yes, sir.

Q. What time?

A. I arrived here, I believe it was the second day of June or thereabouts—the third or the second day of June.

Q. And Fonseca was just then moving out?

A. Not just then. It was some time—perhaps three or four weeks—after. I know I was here backwards and forwards after that four or five days, and I went out to the Point and stayed a few days there.

Q. Was his old store on the Common?

A. I never saw any old store.

Q. You know where it is?

A. Yes; but I never was in it.

Q. Surely you would know where it was.

A. There are two there and another near it, which I do not think is on the 40 Common, and I do not know which of the three he lived in.

Q. How many buildings were there on the Common when you got there?

A. There was that he was living in.

Q. What buildings had Fonseca on the Common?

A. He had a house and a stable there enclosed.

- Q. Anything else ?
- A. Not there ; he may have had more.
- Q. How far was this stable from the house ?
- A. Very little way indeed
- Q. Not the width of this room ? How many feet ?
- A. It was difficult to say. If you like I will measure it for you.
- Q. Just in the immediate vicinity ?
- A. It is nearer twenty feet than anything else. It might be fifty.
- Q. Not over fifty ?
- A. I don't think so.
- Q. Did he not have two stables there at that time ? 10
- A. I said before there may be some little outbuildings but certainly none further away from the house than the present one.
- Q. You would not say whether they had another stable or not ?
- A. I would not be positive, but if it was it was a very small one. If so it was up within the roads.
- Q. I am speaking about within the small enclosure.
- Q. There was quite a long array of trees there ?
- A. Yes, there was ; they are there yet.
- Q. Did he not have a fence the whole length of these trees ?
- A. I might say no. I recollect that same fall driving backwards and for- 20
wards there, and I didn't see a fence.
- Q. Did he have a fence ?
- A. I do not think so, Mr. Howell, he may have at some time or other, but it could not be called a fence when I saw it.
- Q. The row of trees was along his eastern boundary ?
- A. Well, I don't think it was there—It was a very poor fence.
- Q. Was there the remains of a fence ?
- A. If there was a fence there I have no recollection of it.
- Q. Now, Mr. Gray, you purchased this in 1880 or 1881 this forty feet. You 30
knew when you purchased that the patents had been issued to Fonseca, did you not ?
- A. Yes.
- Q. Are you sure that it was not in 1882 ?
- A. It may have been.
- Q. Was the land unoccupied and wholly unimproved when you got it ?
- A. It was.
- Q. Now, Mr. Gray, Mr. Belch refused to give you an agreement for a title, 40
did he not ?
- A. I think it was perhaps through your own advice that he did not ?
- Q. As a matter of fact he didn't give you any agreement for title ?
- A. No.
- Q. And he wouldn't give you anything but a quit claim deed, would he ?
- A. No.
- Q. And that is all the deed you got from Belch ?

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A. Yes.

Q. And you claim entirely through Belch ?

A. Yes.

Q. Who was in possession of the land when you bought ?

A. Well, there was no improvement on it ; I understand Belch was looking after it. On that particular portion of C there was no building.

Q. Who paid the taxes on it ?

A. There was no taxes on it when I bought.

Q. Fonseca's house that you have referred to or what is known as lot 35 ?

A. Yes, that is his present residence and that is his present stable.

Q. His dwelling house and stable ?

A. Yes.

Q. And the store ; Fonseca's store that he moved into when you first came here is lower on the Common ?

A. I believe so.

Q. And part of 35 ?

A. Yes.

Q. And of the southern ten chains of the Common ?

A. I believe so.

Q. And part of 35.

A. Yes.

Q. And part of the southern ten chains of the Common, is it not within ten chains of the southern boundary ?

A. I suppose it would.

Deposition of William Marshall Matheson, Ernest George Pulford, and Alexander Mackinnon Burgess put in and read.

Counsel for the Informant tendered the depositions of the late J. S. Dennis, taken at Ottawa, in the former suit of Mercer vs. Fonseca.

Counsel for defendants objected to the admissibility of this evidence, on the following grounds :

1 That the evidence was not admissible, as the issues in this suit were not the same as the issues in the suit of Mercer vs. Fonseca.

2, That the Informant had, on the 4th day of March, 1886, served a notice upon the defendants that at the hearing of this cause the Informant would give in evidence the depositions of J. S. Dennis and Robert Lang, taken in the suit of Mercer vs. Fonseca, and that the Informant could not put in the depositions of J. S. Dennis without also putting in the depositions of Robert Lang.

The Informant declined to put in the depositions of Robert Lang.

His Lordship decided, with hesitation, to receive the depositions of J. S. Dennis.

The depositions of J. S. Dennis were then put in and read.



ADMISSION.

It is proposed to call Alexander Sutherland to prove the measurements as made by Thomas S. Gray. It is admitted that he will prove them as Gray has done. They measured together.

Plaintiff's case closed.

DEFENCE.

Mr. Glass asks to put in an Order-in-Council, dated 21st June, 1880, certified to be a true copy of a document of record in the Department of the Interior, by P. B. Douglass, Secretary.

His Lordship: This order refers to the Order-in-Council, of the 10th May, 10 1877.—why should it not be received?

Mr. Patterson: I never saw it before. I do not think it is of any relevancy in this case, and it is not properly certified and I therefore object.

Mr. Glass: I tender it subject to objection, and if Your Lordship is not satisfied with the validity of it, it shall not go to evidence.

His Lordship declines to admit this evidence without proof of Douglass' authority to certify.

Mr. Glass: I desire to put in a letter, dated 15th September, 1883, coming from and signed by John R. Hall, addressed to Glass & Glass.

Mr. Patterson: My Lord, I object to that as evidence. It is a mere statement of a clerk, and not made under oath.

His Lordship declines to admit this as evidence without proof of the signature of John R. Hall.

Mr. Glass asks to put in a letter from Col. J. S. Dennis to W. G. Fonseca, dated 8th June, 1881.

Mr. Patterson admits the signature, but objects that the letter is not evidence, not being given on oath. (Document put in and read, Ex 21.)

ARTHUR HENRY WHITCHER, having been duly sworn testified as follows:

Examined by Mr. Glass:

Q. You are the land agent at Winnipeg?

A. I am.

Q. You have been connected with the Department here for how many years?



A. Upwards of fourteen.

Q. You were connected at first more particularly with that part known as the Manitoba Claims Act?

A. Survey Act it would be more properly sir.

Q. But that part particularly with the Manitoba claims?

A. Yes, exclusively.

Q. Now, Mr. Witcher, where the applicant under the Manitoba Act does not claim a title from the Hudson's Bay Company, but claims title purely because of being in possession at the time of the transfer, what possession did you require?

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Mr. Patterson objects as being a matter of law of which the witness is not competent to judge.

Mr. Glass to witness:

Q. What evidence did the Department require before granting patents under the Manitoba Act? What did they require in the past?

Mr. Patterson objects that this is a question of practice.

His Lordship admits the question, but is of the opinion that the question is bad—rather than exclude he will admit it because the Court may have the benefit of it hereafter.

Mr. Glass to witness:

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A. Where a title is not claimed under the Hudson's Bay Company it would be by occupancy, and there would have to be evidence of actual occupancy and possibly possession?

Q. Of how much?

A. Of a certain area.

Q. How much for instance? Suppose a man had a shanty on one end of a Hudson's Bay lot and there was no cultivation or enclosure of any portion of that lot—would that be deemed to be sufficient evidence of possession of the whole lot?

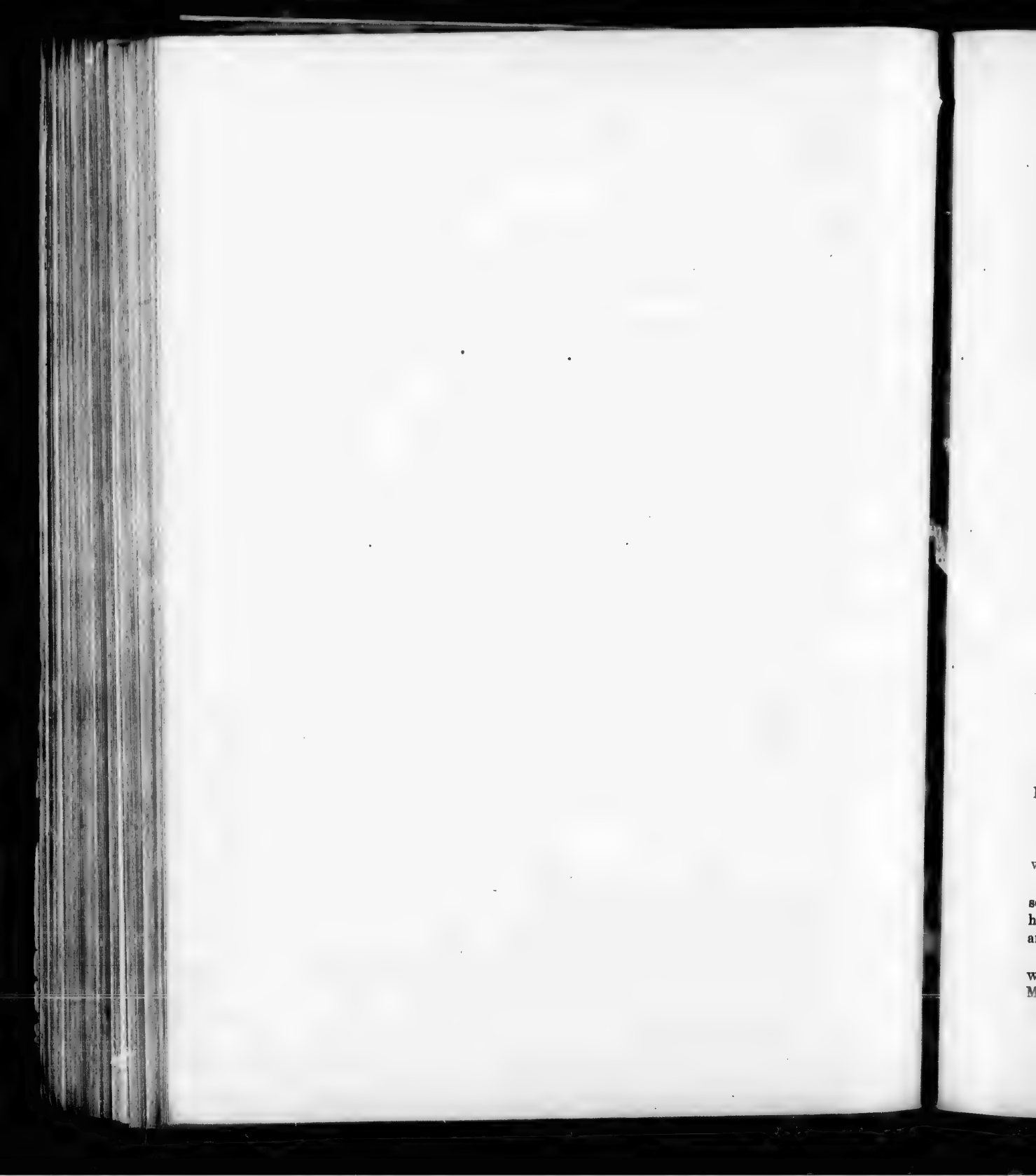
A. No, it would not give him actual possession of the whole lot, but the 30 intention of the Government was to grant a reasonable quantity with that to make a farm.

Q. And usually they granted how much?

A. As a rule, on the river lots, about one hundred and sixty acres. That would be for from ten to twelve chains by two miles in depth.

Q. Now, Mr. Witcher, the depth of the farm they gave with that possession was how much?

A. In the river belt an average of two miles. I do not say that as evidence. It could not be. I say that that was the general principle.



Q. Where you found, say two persons, in peaceable possession of a ten chain lot, that is, lot ten chains wide, in what way were they dealt with?

A. If there was any conflict of claims the probability is they would be divided.

Q. In which way?

A. Lengthwise.

Q. And each would be given ten chains, with a depth of ten chains?

A. Yes, in the case I speak of.

Q. Lot 35, according to the Dominion Government survey, is that a regularly surveyed lot or not?

A. It was surveyed as a farm lot as a whole. I would like, with Your Lordship's permission, to say that I think Col. Dennis meant in his evidence when he said it was not surveyed, that it was not subdivided. I do not wish any conflict between his evidence and mine. It was surveyed, and is shown on the survey draft as Hudson's Bay Company's land, and it was also surveyed and known as lot 35 on the Dominion Government survey. 10

Q. It was shown on the Hudson's Bay Company's survey?

A. Yes; on a very old plan as 244—lot 35 in the Parish of St. John. Perhaps, my Lord, I should not have said what Col. Dennis meant, but I didn't want to say that he was wrong. I think that he meant it was not subdivided. 20

Q. Lot 35 is one of the system of parish lots, is it not?

A. Yes.

Q. Is not lot 35 just as much one of the parish lots as any other in the Parish of St. John?

A. I always considered it so.

Q. Now, Mr. Whitcher, do you know where Mr. Fonseca's house was at the time of the transfer, or were you not here then?

A. I was not here then.

Q. It was situated on what lot of the Hudson Bay Company's survey?

A. The house where he lives on the Point lot?

Q. No; his house on the Common, where these trees are. It was on what Hudson's Bay lot? 30

A. On 224 and 35.

Q. So that his house was on this lot commonly known as the Common?

A. When I say it was there, it was there when I came here. Of course I was not here at the time of the transfer.

Q. Mr. Whitcher, following up the course taken of granting patents to settlers on parish lots, was Mr. Fonseca entitled to anything more than where his actual house was? Following up as others got patents, was he entitled to anything more? 40

A. Following up the custom— Well, strictly speaking, of course nobody was entitled to anything more than they were in actual possession of under the Manitoba Act.

Q. What they got in addition to that was by the grace of the Crown?

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Q. Then every settler in the settlement belt of this country got some land by the grace of the Crown?

A. He did, and a good deal of it, too.

Q. Every settler in the river belts of this country got some land by the grace of the Crown?

A. Yes.

A. Lots of instances along the rivers where there was only a small amount of cultivation on the front of the lot.

Q. Would you look at that paper please and tell the court what it is?

A. It is a letter-book; in that letter-book page 249 I find a letter-press copy 10 of a public notice.

Mr. Patterson objects to proving letter by letter-press copy.

"Notice is hereby given that the claims by squatting on or otherwise, to any Government lands within the settlements both of the Red River and the Assiniboine River, without the authority of this Department previously obtained will not be recognized by the Government. Persons are hereby required to govern themselves accordingly."

Q. Who signs that?

A. Signed by J. S. Dennis, Surveyor-General.

Q. What is the date of it?

A. It is dated 21st March, 1873.

20

Q. Now, do you know anything about a notice at that time, 21st March, 1873?

A. I know that that notice was issued; I am not sure that I didn't see Col. Dennis sign it myself; I know that it was placarded about, posted up in the offices; I have seen a number of them myself from the Dominion Surveys Office.

Q. Here in Winnipeg?

A. The Surveyor-General was in Winnipeg at that time; it was in Winnipeg.

Q. What was the purport of it?

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A. Notifying parties not to settle on public lands and if they did they would have no right to homestead, or to purchase on the Red River and Assiniboine.

Q. This was after the transfer?

A. 15th July, 1870. This is dated the 21st March, 1873.

Q. At any rate there is a notice, can you tell whether that was fully circulated?

A. It was.

Q. By placard?

A. By placard and sent through the post. Every person who communicated with the office or came in and made enquiries in regard to the lands on the river was handed one of these notices or they were read to him.

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Book put in.

Q. Can you tell who P. B. Douglas is ?

A. He is the Assistant Secretary of the Department of the Interior at present.

Q. How long has he been that ?

Q. I wish to prove a certificate of an Order-in-Council, the date is not given: do you know if there is a parliamentary building at Ottawa ?

A. Yes.

Q. Who commonly certifies to copies of papers ?

Mr. Patterson objects.

By His Lordship : Is he the head or the deputy-head, or chief clerk ; is he any of them.

A. I suppose he would be considered one of the Chief Clerks, but there was a chief clerk at the time of the passing of that Act, but the Act of this year provides that the Secretary— 10

His Lordship : What law is that you are telling us ?

A. It is an Act. This Statute implies that there was a Chief Clerk.

Q. Is he the man ?

A. No, he was not.

Q. Who is the Chief Clerk of the Department of the Interior, or one, if there is more than one ?

A. I may say at the time of the passing of that Act, the organization of the 20 Department, was as follows : the Head, the Deputy Head, the Surveyor General, the Chief Clerk, and the Clerks, according to seniority. There was no Secretary or Assistant Secretary at that time.

Mr. Glass :

Q. Can you tell me who was Minister of the Interior on the 21st June, 1880?

A. John A. Macdonald

Q. Look at that paper and tell me whether that is an Order-in-Council ?

Mr. Patterson objects that the certificate must be proved.

Q. Do you know the signature to that certificate ?

A. I do, it is the signature of Mr. Douglass.

Q. What is the date of it ?

A. 21st June, 1880.

Q. Who does it purport to be signed by ?

A. John A. Macdonald.

Q. By whom is it certified ?

A. By P. B. Douglass

By His Lordship :

Q. Do you know that man ?



A. I do, My Lord.

Q. Who is he, and what is he?

A. He is now Assistant Secretary to the Department of the Interior.

Q. How long has he been such, do you know?

A. About three years, if I remember rightly, three or four years.

Q. What was he before then?

A. He was a first-class clerk in the Department. He was Chief Clerk of the correspondence branch, or one of the chief clerks. He has been in the Department since about 1873.

By Mr. Glass :

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Q. How long had he been in that position before?

A. Since 1874 I think. He was in the office here when Col. Dennis was here in 1873, and he went down with Col. Dennis, and his exclusive business was correspondence, and has been always. He has gone through several grades of clerkships. You will see his appointment in the books of Orders-in-Council. That is his writing in that book.

Q. You refer to that notice do you?

A. Yes.

By Mr. Patterson :

Q. You say Mr. Douglass was assistant secretary. Now, I see that there 20 he signs in that paper for the secretary, and here is another place in which he signs for the secretary?

A. That is before he was assistant secretary at all. He was acting for the secretary during his absence and then they appointed an assistant secretary, and Mr. Douglass received that appointment.

Q. When he signs that letter in what capacity does he sign?

A. As acting for the secretary during his absence.

Q. At that time—at the time he signed for the secretary—who was the deputy head of the Department? In the first place you don't know the date of that order, do you? Was Mr. Douglass ever the deputy head of the Interior? Was 30 he ever the chief clerk of the Department of the Interior?

A. No.

Q. Is he a chief clerk or officer authorized to test and certify copies of records from the Department and certify to copies in the Dominion Lands Office?

A. I have no doubt he is. Documents are sent to us certified by Mr. Douglass. Whether he is the person who should I cannot say. He is authorized by the Minister.

Q. How do you know this?

A. I assume that he would not do it, because documents of very great importance that are sent here are signed by him.

Q. You only assume that by his doing that?

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A. I do, because I do not assume he would exceed his duty.

Q. Does he act in any of the offices here by virtue of his office?

A. I know that he is authorized by the Department to certify documents.

Q. How do you know that he is authorized to certify documents?

A. Well, I have not the slightest doubt about it, but the Minister of the Interior never told me so himself.

Q. Have you seen any authority from the Minister?

A. I have never any direct authority.

Q. How do you know, then, that he was authorized to certify to documents?

A. Because I know that papers, copies certified by him are used in departmental work, and are sent here as official documents. 10

Q. That is your only means of knowledge that he is authorized to attest copies?

A. That is the only means I have of knowing.

Q. You know the gentleman himself?

A. I do. I have for many years.

His Lordship:

I admit the evidence, subject to Mr. Patterson's objection, that the Dominion Statute authorizing Mr. Douglass to certify and make certificates of the papers therein mentioned, evidence is *ultra vires*. I think it is, but do not rule the document out, sitting as a single Judge. The statute referred to is the Dominion Lands Act, 1883, section two, subsection four. This section has been repealed and re-enacted with more ample words, by statute of 1886, Cap. twenty-seven, section two, subsection four. This I also think is *ultra vires*.

Mr. Patterson (to witness):

Q. How long did you say Mr. Douglas had been Chief Clerk and Assistant Secretary?

A. Between three and four years. (Document read, dated Ottawa, 21st and 29th June, 1880, referring to the order-in-council of the 10th May, 1877. 30 Document put in Ex. 22)

By Mr. Glass:

Q. How are the Departmental rulings made known to parties interested?

A. Either by public notice or by correspondence.

Q. You mean by letter do you?

A. Yes.

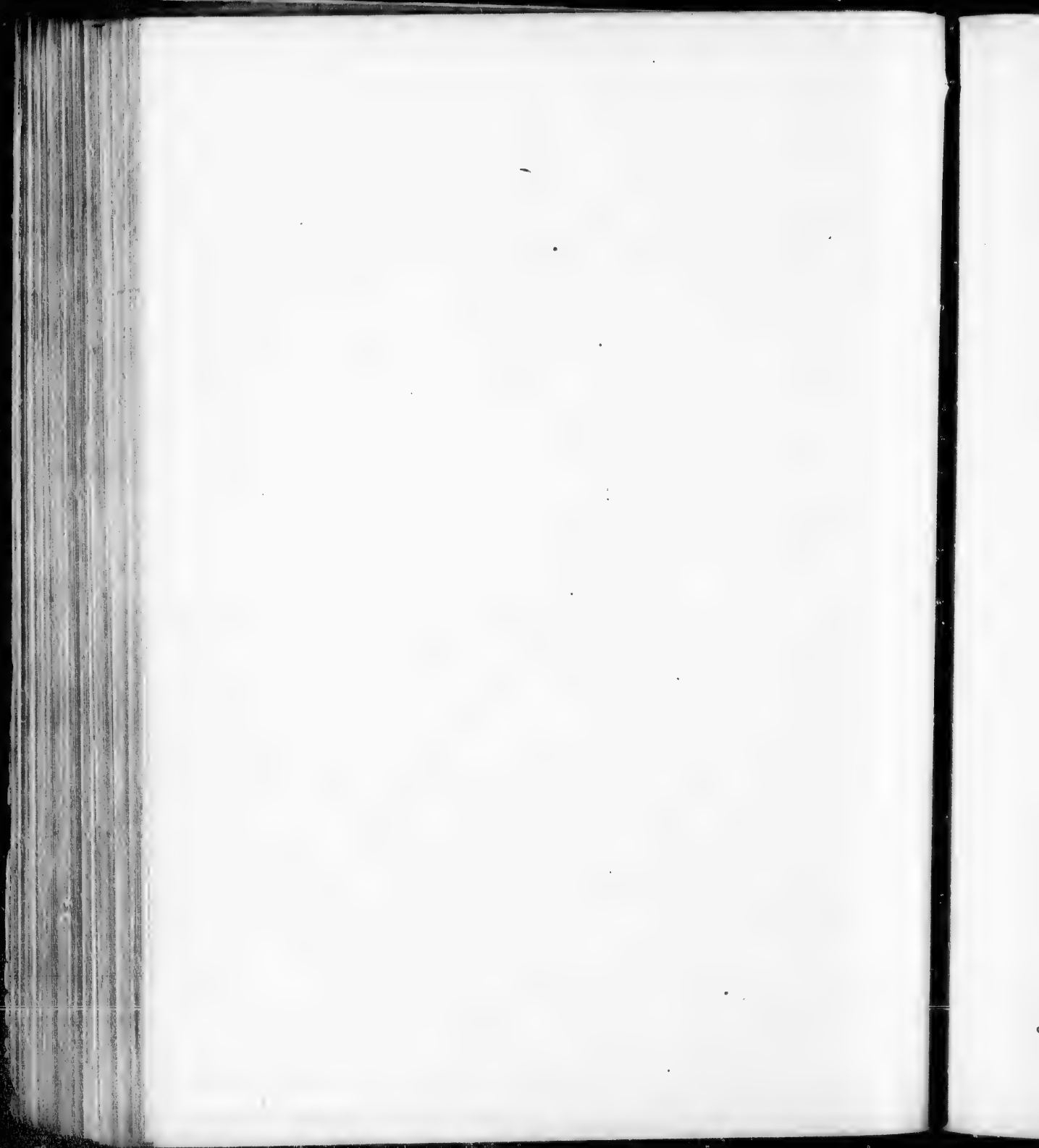
Q. Such notice as you have here of the 10th of May?

A. Yes; of that nature.

Q. Either by such notice or by letter.

A. Yes—official letter.

Q. Who is the person to sign such letters for the Department of the Interior? 40



A. Usually the Secretary.

Q. Who is the Secretary of the Interior?

A. Mr. John R. Hall.

Q. How long has he been such?

A. At least three years.

Q. What was he before that time?

A. He was not in the Department. He was Acting Secretary for a short time. Prior to that he was not in the Department. He was brought in and commenced his career as Acting Secretary.

Q. Turn up the original paper of which that is a copy -15th September. 19

A. Yes. This is a draft of an official letter.

Q. What have you got in your hand there, now?

A. I have here a part of the M. A. file 2172—I have the draft of an official letter dated 15th September, 1888.

Q. To whom is it directed?

A. It is directed to Messrs. Glass & Glass, barristers, Winnipeg.

Q. Read it now, please.

Document read, Ex. 20.

Q. Who was Hall at that time?

A. His Lordship says that is not evidence. 20

His Lordship: But having admitted that document in evidence, I must rule this in.

Cross-examination by Mr. Patterson:

Q. You state that usually the applicant for patent for lands under the Manitoba Act would get two miles in depth?

A. I did.

Q. Now, is that limited to lands having river frontages?

A. Yes.

Q. So that as far as you can recollect applicants for patents for lands under the Manitoba Act would get two miles? 30

A. I said that was the general principle.

Q. Do you know any case where a depth of that sort was granted, where there was not a river frontage.

A. There may have been along lots granted where there was not a river frontage?

Q. Can you recollect any?

A. Yes, I think I do, but I think they have been unusual because there were lots of claims.

Q. You refer to staked claims?

A. Yes, I say it was a general principle; I mean that there were several 40 cases where of course lots were got in full by the bend of the river, for instance,



as in general lots got in St. James' land and in St. Francis. I know of a lot that is not half a mile long.

Q. You state that lot 35 was as much a parish lot as any other in the parish of St. John?

A. Yes.

Q. Now, do you not know that there was a difference between lots 35 and the other land in the parish of St. John; in the way it was used I mean?

A. Well, as to record of title to it, I mean in the way it was used, when I speak of it as a parish lot I am speaking with regard to survey.

Q. Now, I am asking you if lot 35 was not used differently from the others? 10
By the holders jointly as a Common on the rear of their several river frontages?

A. It was.

Q. It was called a Common lot and was used by them for hay and pasture, was it not?

A. I do not know for a fact. I don't know that I ever saw people's cattle grazing there. Anything about that I couldn't swear to; people who lived on all lots were using it, but I believe that was the case, in fact I know this much that the whole of the lot was claimed at one time by the Point holders.

Q. As a Common?

A. Yes.

Q. As having been used in common by them? 20

A. Yes.

Q. You have been, you say, fourteen years in Winnipeg in connection with the Dominion lands?

A. Fourteen, yes.

Q. Are you aware of any cases where the Government have allowed option of purchase?

Mr. Glass objects. Question allowed.

Q. Do you know of any cases in which the Government has given patents for, or has given first option of purchase to persons who have gone into occupation 30 and have made improvements on land since the fifteenth of July, 1870?

Mr. Glass objects. Question allowed.

Question repeated.

A. I do.

Q. Is it not the fact that the Government, to your knowledge, have made a practice of allowing first option of purchase to persons who have been a long time in possession and made improvements?

Mr. Glass objects.

Q. All those cases where improvements have been made since 1870—is it not the practice of the Department to allow persons to do that where persons 40



have been in possession for many years, although such possession was since the 15th day of July, 1870? Was such practice general?

A. There have been such cases.

Q. Do you know of any cases where persons who have been long in possession and made improvements, although such possession was subsequent to the 15th July, 1870, got no compensation whatever, and were ruled out entirely by the Government?

A. I do not know of any case that would not be considered by the Department, unless it was over-ridden by the Manitoba Act, by claiming actual occupancy under the Manitoba Act, which takes precedence of every- 10 thing, where the claimant would not be considered entitled to the first right of purchase.

Q. What do you mean provided it is valid?

A. I cannot say. That was because the Government would not consider the claim. It was not valid. That was superfluous—what I meant to say is that if the Crown was in possession and there was no claim to it under the Manitoba Act, that the first applicant would have the right to that, provided the Crown intended to dispose of it.

Q. Supposing that the first applicant, however, had not been in possession at all but there was another who was in first, but whose application was in, who 20 showed longer possession and proved it subsequent to the 15th July, 1870, what would the course of the Department be?

A. Well, I know that the person in possession would be considered first.

Q. Would have his claim?

A. Certainly. I say always, excepting the Manitoba Act; it takes precedence of everything.

Q. Now in the case of a piece of land which was not in possession or occupancy of any person at the time of the transfer, but that person shortly after the transfer went into possession and remained there for a long time, what would be the practice of the Department?

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Mr. Glass objects to the practice of the Department being given by any officer of the Department, especially by this officer.

Mr. Patterson repeats the question.

A. I must also repeat my former answer, that if the Government intended to dispose of the land that person would have the first right to purchase.

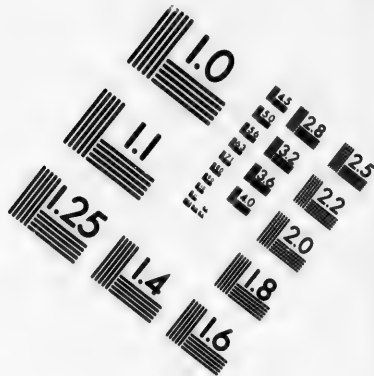
Q. Is that so? Does this only apply to farm land?

A. All lands on the river. It would not apply to town and city.

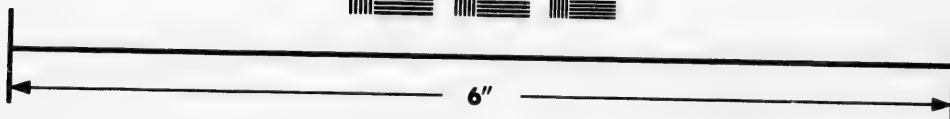
Mr. Glass: I refrain from re-examining on this evidence. I consider that he cannot give evidence of custom.

WILLIAM G. FONSECA, being duly sworn, testified as follows:





A resolution test chart featuring various patterns of horizontal and vertical lines of increasing frequency. Each pattern is accompanied by a numerical value indicating its resolution. The values include 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8, 3.2, 3.6, 4.0, 4.5, 5.0, 5.6, 6.3, 7.1, 8.0, and 9.0. The chart is used to measure the resolving power of imaging systems.

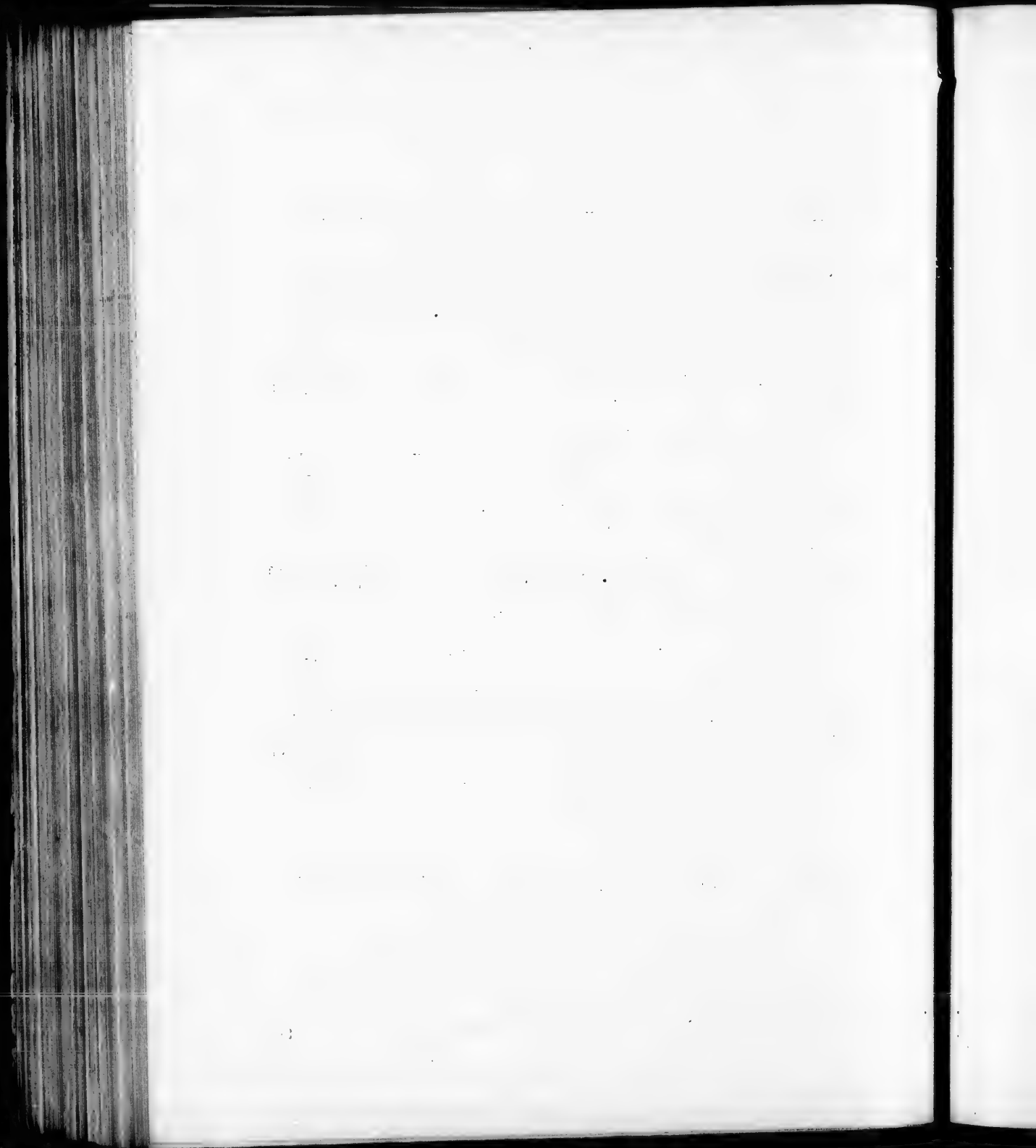


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By Mr. Glass :

Q. When you got your patent 5th November, did you discover anything in regard to it ?

A. Yes. I discovered that it included a certain number of lots that had been deeded by the trustees.

Q. When you discovered that, what did you do ?

A. I notified the Department

Q. And what followed ?

A. I gave quit claim deeds, by their order, to those sundry parties, and chose other lands.

Q. Was there any other error of any nature in your patent ?

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A. No.

Q. Did your patent include lots C, D E and F ?

A. Yes.

Q. But was there any other error at any other time in your patent ?

A. No.

Q. Did your patent include lots C, D, E and F ?

A. Yes.

Q. The lots that you gave quit claim deeds to parties of were not because of the parties having been in possession of them then since the 15th of July, 20 1870 ?

A. No.

Q. But by reason of their having deeds from the trustees ?

A. Yes.

By Mr. Howell :

Q. Then the only reason why you conveyed any lots was because those lots were conveyed by trustees ?

A. Yes.

Q. Was any part of this land ever for sale by the Dominion Government ?

A. Never.

Q. Was it ever offered for sale ?

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A. No.

Q. How much of the Common is still held by the Dominion Government ?

A. About sixty-five acres.

Q. How far is the hospital from the lots C, D, E and F ? The hospital that the Government granted on the Common.

A. There are two.

Q. Well, the nearest one.

A. The neighborhood of half a mile.

Q. To the west

A. Yes.

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Q. Further west than these lots ?

A. Yes

Q. And the other is still further?

A. Yes; a mile.

Q. Mr. Burgess, in his testimony, speaks of a conveyance or transfer by the Government to the city and to the hospital. These lots, you say, are the nearest to them—half a mile from the lots in question?

A. Yes.

Q. As the lands recede westward from Main street they recede in value, do they not?

A. Yes.

Q. How much land did you actually occupy on the Common—how many 10 acres—that is your homestead enclosure?

A. About three acres—three or four.

Q. Your possession extended clear across the ten chains—three acres?

A. Half a mile.

Q. Well, the piece of land you occupied was at the east end, was it not?

A. Yes.

Q. The piece marked in purple pencil on Exhibit 1 shows the part of the common that you occupied?

A. Yes.

Q. How much land is there of that?

A. Between three and four acres.

20

Q. And the piece marked in ink just behind it is the part that you had purchased previously from Neil McDonald?

A. Yes.

Q. How much is there of that?

A. About two acres.

Q. Did you purchase that before the transfer?

A. Oh yes, in 1864.

Q. At the time of the purchase this was also a part of the Common—at the time you purchased from Neil McDonald?

A. Yes.

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Q. Now, the block shown by purple pencil on Exhibit 1 on the west side of Main street is where you built your store?

A. Yes.

Q. Was that before the transfer?

A. Yes.

Q. The red mark on the east side of Main street, shown on Exhibit 1, is the land in litigation, is it not?

A. Yes.

Q. This land in litigation is also within the width of your ten chains?

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A. Yes.

Q. Do the little blue lines on Exhibit 1 show the ten chains that you put in the claim for?

A. Yes.

Q. Do you remember when Mr. Gray commenced putting up the building on his lot?

A. I think it was in 1882. In the summer, or between the spring and summer.

Q. Where was he putting it up?

A. On the land in dispute.

Q. Did you say anything to him when he commenced?

A. It was in the spring or summer of 1882 when I saw the lumber there.

Q. That was sometime after you got the patent at any rate?

A. Oh yes, a long time—years.

Q. And the land was covered by the patent?

10

A. Yes.

Q. What did you do?

A. He was on the ground, and I went to him and told him, warning him not to build there.

Q. Did you tell him why?

A. I told him that the land belonged to myself, I had a patent for it.

Q. Did you ever do anything to this property yourself?

A. I enclosed it.

Q. The property in dispute?

A. Yes, the whole of it.

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Q. You had a conversation with the Minister when he was here about a month or two ago?

Mr. Ewart objects to receive any communication from the Minister of the Interior.

His Lordship held that it was not good testimony.

Mr. Howell to witness:

Q. Now Mr. Fonseca there are many charges of fraud made against you?

A. Yes.

Q. What do you say as to that? Were you guilty of any?

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A. I know of none.

Q. Had you anything to do with the selection of the lands patented to you?

A. Nothing in the world.

Q. You look at Exhibit 3. Now, Mr. Fonseca, on the bend piece, that is on the Point lands, did you own any at the time of the transfer?

A. A large holding.

Q. I see there are three large lots with your name upon them on Point Douglas. What do you say as to this? Who was the owner of them at the time of the transfer?

A. Myself.

Q. How many acres would these three lots contain?

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A. Between thirty-five and forty acres.

Q. Could you tell me how many there are in the Point altogether?

A. Two hundred and twenty-seven and a fraction.

Q. And of these you had thirty-five or forty.

A. Yes.

Q. Had you an interest in any of the others?

A. No.

Q. Then these acreages that you have given do not include the acreage of the land that you were living upon on the Common, and the piece that you got from McDonald on the Common. It does not include that at all?

A. No.

Q. And it does not include either the part on the west side of Main street? 10

A. No.

Q. Now, Mr. Fonseca, will you just take another look at that land, those lots that you have, and say upon subsequent reflection how much your land was on the Common. You have spoken of about thirty-five or forty acres.

A. Well, I have always estimated these two lots to be a farm of forty acres.

Q. That is the two lots on which side?

A. That is upon the north side of the Point.

Q. As shown upon the plan?

A. Yes.

Q. So that what do you say now upon reflection?

A. That I owned a good many more acres.

20

Q. When you spoke of thirty-five and forty acres you spoke of that piece of the Common which you had on the north side?

A. Yes.

Q. Well then in addition to that you had a piece on the south side?

Q. How much is there in that?

A. There is about fifteen or sixteen acres.

Q. Well now, I ask you, Mr. Fonseca of the Point Douglas lots, not including the part of the Common that you occupied and not including the part that was purchased from Neil McDonald, how much land did you own at the 30 time of the transfer—how many acres on the point?

A. Between fifty and fifty-five acres.

Q. Now Mr. Fonseca, you and some others became trustees of this Common for the benefit of the Point holders?

A. Yes.

Q. You got a survey made?

A. Yes.

Q. And the various persons entitled to the Common paid for that survey?

A. Four of us paid.

Q. How much did you pay?

A. One quarter.

40

Q. Exhibit 3 is dated 26th December, 1870?

A. Yes.

Q. Do you know when the plan was actually made, before or after that date?

A. The work of the survey was done a couple of months before the date of the plan.

Q. Now do the names of the Point holders properly appear on this plan ?

A. Yes.

Q. Now there are names mentioned in the subdivision into town lots along Main street. How long after the plan was drawn were these names put on ?

A. Almost immediately and from time to time afterwards.

Q. They were not on at the time the map was drawn ?

A. Oh, no.

Q. The names of the owners of the Point itself were on at the time the 10 map was made, were they not ?

A. Yes.

Q. Mr. Logan, is your brother-in-law, Mr. Fonseca ?

A. Yes.

Q. Had you any objection to Mr. Logan getting a slice out of the Common, early in 1871 or 1872 ?

A. No, if he could get it.

Q. Do you mean to say that these people claimed under Logan, now that he is satisfied they should have it ?

A. No, I was quite willing that he should get a title if he could ?

Q. And after looking into it you became satisfied of what ?

A. That he could not get it.

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Cross-examined by Mr. Ewart.

Q. Will you look at that Exhibit 3 and say how Logan's name came to be upon lot C ?

A. I think to the best of my recollection I think that I put it on, I am not quite certain, I think I did.

Q. When did you put it there ?

A. Oh, that was put on after that map had been made. I couldn't tell the exact date.

Q. Now, when do you think that was put on ?

30

A. After the map had been made.

Q. Well, how long after ?

A. I could not tell ; some time after.

Q. Within a year of the time ?

A. It would be merely guessing for me to say yes or no. I could not fix the time.

Q. They were put on from time to time, these names. Can you tell within two years of when they were put on ?

A. I could not. It may have been in a year, or less than that. I could 40 not say positively.

Q. Can you say within three years of what time it was put on ?

No answer.

Q Can you say within five years of what time it was put on? Can you give us a limit of five years and say it was put on between those two times?

A. Oh, I do not understand your question. If I am compelled to give an answer it will be merely a guess, because I cannot speak positively.

Q. You cannot speak positively within a period of five years as to when it was put on? Could you speak positively within a period of ten years?

A. It was put on between three or four years. This is a mere guess.

Q. I am not asking you to guess. Can you tell us positively within ten years when the name was put on that plan?

A. I could not.

Q. When was the plan made?

A. In 1870.

Q. And you cannot say whether that name was put on between 1870 and 1880? Can you swear positively whether that was put on before 1880?

A. It was on before 1880 or 1879.

Q. You are quite sure?

A. Yes.

Q. Although you said a minute ago you could not tell within ten years?

A. I said it was put on before 1880.

Q. You see where ten years brings me? So you are quite sure it was put on before the patent? Are you sure whether it was put on before the patent?

Was it, or are you not sure? Yes; that patent brings the time more definitely.

A. Of course it was before the patent. Yes, I am sure it was before the patent.

Q. Are you sure of it?

A. I think so.

Q. Are you sure of it? Now, was it not put on after the patent?

A. No. I am now positive it was before the patent.

Q. Was it before the plan was registered?

A. The plan was registered in 1872—yes.

Q. It was before the plan was registered?

A. I said within a year, at first.

Q. You said that you thought. I was trying to get your positive information. Now this was registered in September, 1872, and it was made in 1870, and you know it is correct?

A. Yes.

Q. You were quite sure the name was put on before the plan was registered? That was before the 14th day of September, 1872?

A. Yes.

Q. Now, you signed this plan as correct, did you not?

A. Yes.

Q. Was the names on it before you signed it—signed it as to the survey being correct? Was the name William Logan on that lot C at the time you signed the plan?

A. Yes.

Q. And before the others signed it, because I see you signed first ?

A. Oh, we signed all together.

Q. So it was on before any of you signed ?

A. Yes.

Q. You mean the trustees ?

A. Yes.

Q. Now, this plan, I believe, was made out by the trustees for the purpose of disposing of lots, was it not ?

A. Yes.

Q. And the names were put on for the purpose of showing to whom the 10 lots had been given or sold ?

A. No.

Q. Some of the names ?

A. Yes.

A. Other names were put on for some other purpose ? Logan's name was put there because—

Q. Never mind about Logan's I didn't ask you about Logan. Now, you said, Mr. Fouseca, that some names were put on that plan for the purpose of showing to whom land had been given ?

A. And sold, yes. Persons to whom lots had been sold. Sold, not given. 20

Q. Sold, not given ?

A. Yes, some of the lots.

Q. Now, you say that some of the names were put there for the purpose of showing to whom lots were sold. Were no names put there for the purpose of showing to whom lots were given ?

A. Not that I remember.

Q. Were any names put upon that plan for any other purpose ?

A. That is all I remember.

Q. Can you tell me when Pritchard's name was put upon lot B ?

A. No.

Q. Can you tell me within two years ?

30

A. It was put on after the map had been made and before it was registered.

Q. Do you know how it came to be put on ?

A. Yes ; he wanted to purchase a lot, and I made an arrangement with him to buy that lot and put his name on. I afterwards found that Mr. Barber wanted it. Barber found fault a little for making the arrangement and he gave Mr. Pritchard another lot.

Q. You struck Mr. Pritchard's name out and put Mr. Barber's on ?

A. Yes.

Q. And gave—what did you give ?

A. Another lot further north.

40

Q. Dr. Schultz's name, I believe, was put on in error upon lots D and E ?

A. I do not know how that came there.

Q. Don't you ? You told us when you were examined before how it came there ? Who put Dr. Schultz's name on there ?

A. I don't remember, I may have put it.

Q. Perhaps you can tell by looking at it?

A. I cannot say positively at present.

Q. Is that your hand-writing?

A. It doesn't look like it.

Q. You see that is writing, the others are printed?

A. I may have done this. At the same time the names are in print most of them, this one is just written, I may have put it on, I cannot say.

Q. Now, don't you remember saying before, when you were examined before in Mercer vs. Fonseca before His Lordship, that that name was put on 10 by mistake?

A. I said it was a mistake, certainly.

Q. And struck out because it was a mistake?

A. Yes.

Q. I believe the word "Barber" on lot E is in your hand-writing, too?

A. That is not my writing.

Q. Well, now, I have asked you about Barber on lot E? What do you say about that?

A. If it is on the original map, my Lord, I wrote it.

Q. Did you write that for the same purpose that you wrote on lot D when 20 Barber arranged these two lots?

A. If I wrote it, it would be for the same reason.

Q. That is, that he wanted these two lots?

A. Yes.

Q. Now, were lots D and E sold to Barber?

A. They may have been, I cannot say—no, they were not.

Q. I mean by the trustees?

A. No.

Q. Then why was his name put upon these lots?

A. He may have intended purchasing, that would be the object of putting 80 the names there.

Q. Why was Barber's name put upon lot B?

A. For the same reason.

Q. He intended purchasing?

A. Yes.

Q. You swear to that?

A. Yes, I certainly do so, I swear it was his intention.

Q. From whom?

A. From the trustees.

Q. In the same way that he intended purchasing lots D and E?

A. Yes.

Q. Had Barber a house erected on lot B at the time his name was put on that plan?

A. Yes.

Q. And yet you say his name was put upon lot B because he may have intended to purchase it?

A. Certainly

Q. Now, did the holder of Point lots buy from the trustees the smaller lots in the Common in any case.

A. There were considerations given.

Q. Did they buy it from them I ask you.

A. That would be buying it.

Q. I just ask you did they buy it from the trustees?

A. In that way they did.

Q. In what way did they buy it from the trustees?

A. By deeds for the consideration mentioned.

Q. Did they pay any money to the trustees?

A. That I cannot remember.

Q. You cannot remember any case in which it was done?

A. No.

Q. You cannot remember of any case in which any owner of Point lots paid money to the trustees for the land they bought?

A. We kept a sort of open account. We forced nobody.

Q. Well, I suppose the way was this:—The holders of these Point lots 20 would be debited in their account with the trustees for the lots, which they got from the trustees, they would be held as owing the trustees for the holdings for certain values; that is in their account when the money came to be distributed they would be charged with the amount which they agreed to give for the lots?

A. Well, we were not so very strict but they were held for a certain amount each one.

Q. Do you know whether Barber was ever in possession of C, D, E and F?

A. No.

Q. He was not in possession?

A. He never was in possession of C, D, E and F?

A. No.

Q. Was he ever in possession of any part of it?

A. No. He may have been but that is in the rear of B, but not of C, D, and E. Would you please let me see the map? He would be in possession of the lot in the rear of D, whatever that is.

Q. That would be G?

A. Then my answer is as I stated before, that he was not in possession of C, D, E and F.

Q. Never?

A. No.

Q. Nor any part of it?

A. No.

Q. You never understood that to be the case?

A. I knew positively he was not.

Q. In that case of Mercer vs Fonseca, when you were examined before His Lordship, did you say this:—"When Logan put the little log house up, Barber was in possession of C, D and E I think until my patent was issued," did you say that?

A. I may have said that; if you have got it there, of course I said it.

Q. Did you say that?

A. I do not remember. You read it so, I understood that is right.

Q. But you have sworn now that you never understood?

A. It was a sort of occupation without anything. I suppose it was no occupation at all. I have changed my opinion. There was nothing on the lots. 10 He never claimed them afterwards.

Q. Did you on that same occasion say this:—"Barber told me that Logan's name was put on the plan with his consent"?

A. I may have said so, yes.

Q. Is that true?

A. To the best of my recollection—yes.

Q. There was a small house you remember? A small log house, Mr. Fonseca, that Logan built that was commenced in the fall of 1870 you say?

A. Well, yes.

Q. Do you remember a house that was built on the north of that—to the 20 north on the same block?

A. Yes, there is a house there.

Q. What kind of a house was it?

A. A log house. It is the one to the north of the little log house that Wm. Logan commenced in 1870.

Q. Do you know who built that second house?

A. Yes.

Q. Who?

A. James Campbell.

Q. Did he build it alone do you know?

A. I cannot tell you who built with him, I know that he built it—J. H. 30 Campbell.

Q. Built the second log house?

A. Yes.

Q. Do you mean that he did the entire work or that he was first there?

A. He was interested.

Q. Who else was interested?

A. I do not remember.

Q. You knew before?

A. I cannot say, I know Campbell was the responsible man.

Q. Did Campbell ever live in it?

A. I cannot say.

Q. Did Logan live in it?

A. I cannot say.

Q. Who lived in it?

- A. I think Logan lived in it sometime after.
- Q. When did Logan commence to live in it? In 1872?
- A. I cannot tell you.
- Q. In 1873?
- A. It may have been between these two years?
- Q. Who was in possession of the place they were putting it up on?
- A. It was an open empty space.
- Q. Who was in possession then on lot C and D at the time this house was built or immediately after? On C in 1872?
- A. Nobody that I know of. This Logan was in a small house, log house, 10 on C.
- Q. Now, who did you consider to be entitled to lots C, D up to 1872?
- A. Anyone who could make title to it.
- Q. So far as the trustees was concerned who was entitled to C, D, E, in 1872?
- A. Who was? Point holders.
- Q. Who took a right to C D and E as far as the trustees could give it, in 1872?
- A. The Point Douglas holders.
- Q. When you were examined before did you say this: "Barber had a right 20 to the possession of C D and E so far as the trustees could give it, in 1872."
- A. Yes, he was one of the holders.
- Q. Is that true?
- A. He had an interest in.
- Q. Is that statement true?
- A. What is that.
- Q. Barber had a right to the possession of C D and E so far as the trustees could give it?
- A. Yes, that's true, so far as the trustees could give it.
- Q. Did you say this before: "I made no claim to C, D and E, until 1877?" 30
- A. Yes. No particular claim to it. I had no objections to whoever could show title to satisfy the Government; I stated so.
- Q. Did you say this on your previous examination: "He, that is Barber, abandoned in 1873; up to the time Barber moved away I thought him entitled to C, D, E, by reason of his desire to have them, we did not interfere with each other; I cannot say I heard anyone disputing his claim," did you say that?
- A. I may have said so; if it is correctly transcribed, I cannot say.
- Q. Is that true that Barber abandoned in 1873?
- A. I am not certain of that.
- Q. Did you say this in your previous examination: "He, that is Barber, 40 abandoned in 1873; up to the time Barber moved away I thought him entitled to C, D, E by reason of his desire to have them. We didn't interfere with each other"—
- A. That is true v did not interfere with each other, no.
- Q. That whole sentence is true?

A. I cannot say, I know we never did interfere with each other.

Q. You cannot say whether it is true or not?

A. It may be correct, I cannot say. Barber or anybody else could have had them if the Government had given them to them. I could not object.

Q. When did Logan first claim lot C?

A. I never knew him to claim it at all.

Q. Till after the patent?

A. He made no disturbance thereto.

Q. Did you ever know, previous to that, that Logan claimed any part of C, D and E, any part of it?

A. No, I do not remember that he did. It doesn't strike me that he ever did, until after the patent about half a mile. 10

Q. On your previous examination that I have referred to did you say this: "A good while after Barber left Logan claimed—perhaps two or three years after Barber moved away. This I think was the first I heard of Logan's claim to C, D and E; I knew he claimed C at an earlier date than that; it was between 1872 and 1873 that Logan claimed C; I cannot tell whether it was before or after Barber left." Now, are the statements of fact contained in that extract true?

A. I heard so.

Q. I say does that extract correctly express the truth? 20

A. Yes, I have heard that it did.

Q. That only refers—I will read the whole paragraph to you again and then my question is, are the statements of fact contained in that true?

A. Yes, that is true, always qualifying with that that we never had a word together on that subject. It was what I heard. We never had a word on the subject until after the patent issued.

Q. Now, I want you to tell me who was in possession of C, D, E and F, at the time you got the patent. Just mention who and of what they were respectively in possession? 30

A. C was in possession of Mr. Logan—William Logan.

Q. And D the house you speak of north was supposed to be on C?

A. We never supposed he was in possession of that of D. He was in possession of C, we knew that.

Q. Was anyone in possession of D, or any part of it at the time you got the patent?

A. I don't remember—I think not. To the best of my recollection, I think not—No, it was an open space, I think so.

Q. Was anyone in possession of C or any part of it when you got the patent?

A. I think not, to the best of my recollection, it was an open as it is now. 40

Q. Was anyone in possession of lot F or any part of it when you got the patent?

A. No.



Q. Can you say whether there were any buildings on lot E or F, or either of them when you got the patent?

A. No, I think not. Not that I remember.

Q. Was there not a man of the name of Canmore or something like that?

A. No.

Q. Do you know any man of that name, Honeyman, some name like that?

A. I don't remember. There are so many queer names, and we get many names that I don't remember a man of that name. He may have been an occupant for a time.

Q. When do you say you said there was a shanty on E or F?

A. There was one McDonald there now.

A. At the time the patent was granted, well he was there prior to this period.

Q. Do you remember anybody on E or F when you got the patent?

A. I cannot tell. I do not remember if there was a shanty on. It must have been a very insignificant thing I don't remember.

Q. You knew Belch. What part of the property was he in possession of at that time?

A. I never knew him to be in possession of any part.

Q. What property did he own then or claim to own?

A. Well I was told he bought a piece from Mr. Freeman.

Q. He bought some part of the property there from Mr. Freeman, do you know what part?

A. I cannot tell, it is to the south of Logan.

Q. Was William Logan ever in possession of the southerly forty feet of lot C and F?

A. Well, it was shown up. He was in possession of C, by his little log shanty.

Q. I ask you was William Logan ever in possession of the southerly forty feet of C and F?

A. I cannot tell you that he was in possession of C.

Q. Did you ever make a statutory declaration in which these words occur: "that one William Logan was in occupation of said portions of lots C and F in the summer of 1870." The portions referred to in that extract are the southerly forty feet of lots C and F, and sixty-six feet on Austin street, by seventy feet in depth of lot G. Did you say with reference to that property that one William Logan was in occupation of the said lots lettered C and F, in the year of our Lord, 1870?

A. If the declaration is there I said so, I was never against Logan getting the property, the whole of it.

Q. (Showing witness document) You did make a statutory declaration to that effect on the 6th July, 1879?

A. Yes.

Q. That he was in occupation in 1870, would you know the month and is that statement true?

A. Yes.

Q. And did you in the same declaration say "and the same, that is meaning the same property, has been since occupied by him and those claiming under him"?

A. Yes.

Q. Is that true?

A. If it is there it is true.

Q. Did you in the same declaration say this "that the trustees of Point Douglas Common cannot claim any rights in or to the said lands, but acknowledge the title of those claiming through the said Logan and Barber 10 respectively"?

A. Yes, I said that.

Q. Is that statement true?

A. Yes, that statement is true, as we understood, acknowledging their title.

This is the declaration filed upon the Belch claim, declared on the 5th day of July, 1879. One referred to by Burgess, filed 30th July, 1879, Exhibit H, referred to in the depositions of Alexander Mackinnon Burgess.

Q. After you got the patent did you tell Logan that you would not disturb him in the possession of the lands that he claimed any of the lots? 20

A. Where he was living I think I did.

Q. Where was that?

A. That was on C, it may have included part of E or F, I could not say whether it is true.

Q. Did you agree to buy after you got the patent part of this property from Logan?

A. Yes to carry out that arrangement that we had made.

Q. The part that he was in possession?

A. Not the whole, but what he was occupying then.

Q. Some forty feet was it not?

A. Well, very nearly. 30

Q. That was where the Point Douglas house was?

A. Yes, to carry out the suggestion that I would not disturb him, I agreed to purchase this. This was the purchase piece.

Q. You agreed to give him nine thousand dollars?

A. That was the agreement originally, but that was rescinded.

Q. But afterwards you had some litigation, I believe, and a new bargain was made?

A. Yes, I wished to take no advantage of him.

Q. Now after you got the patent, did you also buy from any one part of 40 lot E?

A. From whom?

Q. A man called Jackson.

A. He came to me.



Q. How much did you buy from him?

A. Well I really cannot tell you, I think it was about one hundred feet on Austin street, but it does not run back very far, about ninety feet in depth. The other side is only sixty or seventy feet. That was purchased in the same way to avoid—

Q. What amount did you give him for that?

A. I think it was between five and seven hundred dollars, I couldn't say exactly. Well, I couldn't tell you that, it was some time after. I couldn't tell you the exact date of that, it must have been in 1880, somewhere in 1881, 1882 or 1883.

Q. How long was it after the patent before you interfered in any way with Mercer's claim? 10

A. I enclosed it in 1880.

Q. You said 1882 before?

A. Well, I was not certain of that, I think it was about 1880, 1882, let me see, well, it was sometime there. I told Mr. ——— most likely it was in 1880. We talked it from 1881 down. It was not till 1882 very much was done.

Q. Is that a correct statement?

A. Well, the enclosure was made, as I said, in 1880. Substantial enclosure. These two dated from that.

Q. What property did you enclose in 1880? Did you go from the Main street clear around enclosing Gray's—part of Gray's claim also? Your fence was along Main street? 20

A. No, that was not necessary.

Q. Where did your fence commence, now, just tell us?

A. It commenced at the corner of Fonseca and Main, and down to the corner of Fonseca and Austin, and southerly to the extent of the land in my patent.

Q. That is, southerly down to the cross street?

A. Along Austin street and then westerly to the Main street.

Q. And you say this fence was built before the end of 1880? 20

A. I think it was 1880, my lord.

Q. Did you say in your previous examination "I didn't interfere with Mercer as to the ninety-two feet until 1882"?

A. I told him about that time the property was mine. I told him, most likely, in 1880, and before that the patent had issued to me. We talked it over from 1881 down. It was not till 1882 there was much done.

Q. Are these statements correct?

A. Yes.

Q. With the exception of the fence?

A. I didn't say anything about the fence. That should be put off. I think the fence was in 1880. 40

Q. When did you first pay taxes upon C, D, E and F?

A. Well, I paid taxes upon the portion of Point Douglas Common at a very early date.

Q. With reference to the C, D, E and F?

A. After the school system had been established, of which I was one of the trustees myself. The school system was established in 1874.

Q. What I want to know is when did you first pay taxes upon C, D, E and F?

A. Well, the tenants paid taxes.

Q. When did you pay taxes?

A. I paid taxes on it the time the arrangement made for the tenants to pay?

Q. When did you personally pay taxes?

A. It was not necessary for me.

Q. When did you personally pay taxes on any part of C, D, E and F?

10

A. I do not remember, except at that early time before it was surveyed.

Q. Did you ever pay taxes upon any part of C, D, E and F?

A. Yes, I collected rents from the tenants and paid it personally.

Q. Can you give me any idea when you first personally paid any taxes on any part of this property?

A. I think in 1884, may be in 1883.

Q. Now, on that examination, did you say this: "I paid taxes on D and E last year and this year a portion of the taxes are paid by tenants on account. I cannot tell what taxes I paid myself. I do not remember paying anything in 20 1884 on D and E in 1884. No, the tenants paid it—prior to 1884 I paid nothing on D and E." Are these statements correct?

A. Yes, qualified as I say, they are correct.

Q. Qualified by what?

A. As to what was paid by the tenants.

Q. What tenants had you previous to 1884 on any part of this property?

A. I think there was several in 1884. There was quite a change of tenants from time to time; sometimes they were in tents, sometimes in shanties, some moving and some putting on, constantly moving. Mr. Ryan has been there some time; he has always paid the taxes in that portion.

30

Q. I am speaking of prior to 1884?

A. I said 1884, Mr. Ryan was there in 1884 and he paid the taxes.

Q. Prior to 1884 what tenants had you that paid taxes?

A. I cannot remember their names, a multitude have come and gone.

Q. Of tenants, who paid taxes?

A. They had to pay taxes.

Q. Who did pay taxes?

A. Yes.

Q. Do you say that?

A. That is to the best of my recollection.

Q. Can you say then, Mr. Fonseca, that you had any tenants who did pay the taxes, that is prior?

40

A. Well, I cannot remember that.

Q. It was between 1883 and 1884?

A. Oh, you—

Q. In April, of 1882 ?

A. I do not remember that. I know there is a large amount of taxes left on the property before that time.

Q. Do you know who paid the taxes previous to that time, previous to 1884 ?

A. I do not believe any one did.

Q. You state Mr. Fonseca that what you told Logan about not interfering with him, was that you would not interfere with the part that he was in possession of; is that what you say ?

A. That was my intention.

Q. Did you say this in cross-examination : " I told Logan I would not interfere with his lot C and Schultz and I agreed to this " ? 10

A. That part of it that we bought.

Q. What I ask you was, did you say that on that occasion ?

A. He could not buy any other portion. We would not interfere with that portion that he had for sale, that he occupied, the forty feet.

Q. And Schultz you say agreed to that ?

A. Yes, I got Dr. Schultz to agree.

Q. Did you on that examination say : " I told Logan I would not interfere with his lot C " ?

Q. Is that what he states there ? 20

A. Yes, I did say that, but it was with reference to the portion that we were bargaining for.

Q. Now then the part that you say, now you told him you would not interfere with, that was all he had left out of C, D, E and F at that time, was it not ?

A. Yes.

Q. Did you say this on that occasion " a fence around C, D, and F, was made by me in 1883 " ?

A. I said it in the same manner as I said this, it must have been said if it 30 was there. I cannot say

Q. " That is the first improvement I did—I am sure that that is the first improvement I did, I am sure that this was in 1882, the first improvement was in the latter part of 1882, I think " You did say that ?

A. Yes.

Q. And that is true ?

A. To the best of my recollection.

Q. Now you say you paid one quarter of Sabine's bill, who paid the rest ?

A. Honorable Senator Sutherland one quarter, Dr. Schultz and Mr. L. 40 Barber, paid a quarter each.

Q. Whereabouts was Barber's house, on what lot ?

A. B

Q. On what part of B ?

A. I think it was, if I remember rightly the little piece of it.



Q. What was the shape of your house?

A. It was a shop with a dwelling over it.

Q. That is where the Mansion House now stands, is it not?

A. Yes. I don't know which is the Mansion House in fact.

Q. What is now upon the forty feet that Belch had which he sold to Grey?

A. One portion of it, there is nothing. There is a building on the southern portion of it but I do not know how many feet.

Q. What is it called?

A. I do not know.

Q. Is it the Inniskillen House?

A. I do not know. I cannot remember these names anyway, I do not frequent the saloons. 10

Q. There is a building on it?

A. A tavern, yes.

Q. In whose possession?

A. I do not know. It doesn't belong to Mr. Gray.

Q. Do you know anyone that was in possession of that building, that you just spoke of?

No answer.

Q. How far is that south of what is known as the white building? I 20 think you have been speaking of that in your evidence.

No answer.

Q. Do you know the old block building of William Logan's?

A. Yes.

Q. Then you know the larger building to the south of that built by Logan

A. Yes.

Q. That just joins the old log building, does it not? Is that what is called the white building?

A. Built between '71 and '72.

Q. This building then, that was on the portion of the forty feet is to the 30 south of that building?

A. Yes.

Q. About how far?

A. Eighteen from forty would be just that distance.

Q. Twenty-two feet from that?

A. Yes.

Q. Was that Belch's forty feet commenced at the south side of that white building?

A. Yes, six feet from it.

Q. Now, that old log building, on what lot was that?

A. That was on lot C. 40

Q. Do you know how far that log building was from Fonseca street?

A. Well, between ninety and one hundred feet—I cannot state exactly.

Q. Is that your signature, Mr. Fonseca, to the letter already referred to, from you to Col Dennis, dated 3rd October, 1878, referred to as Exhibit E, in

the depositions of Mr. Burgess, and the schedule annexed is in your handwriting?

A Yes.

Q. Now, for the purpose of locating these lots as far as we can, will you look at this plan. This one that was used in the last case, *Mercer vs. Fonseca*, and made by Mr. Harris. Of course you will not agree to where the line is between C and D, but it is not with reference to that that I wish to ask you, but it is with reference to the buildings. This is supposed to show the old log building. I ask Mr. Fonseca to show us as far as he can recognize, as the various positions of these buildings?

10

M. Howell objects to the plan being put in without being proved.

His Lordship: I think it should go in and let the plan be referred to as one not proven, except as to what Mr. Fonseca would say in reference to his buildings. If Mr. Fonseca proves that plan in any way it will be evidence so far as he proves it.

Plan marked Ex. 27.

By Mr. Ewart:

Q. How far back from Main street were the log buildings that Logan put up?

A. I said before, between ninety and one hundred feet.

20

Q. How far back from Main street, that is, Fonseca street?

A. Oh, about twenty feet. It is just the length of that new house which is put up in the rear of it.

Q. Well, now, how far would that be?

A. About thirty feet.

Q. Logan put up one or more buildings, did he not, to the north of the log building?

A. James Campbell was the principal man doing that. Afterwards Logan bought from Campbell.

Q. It was Campbell, then that put up the frame building to the north of 30 the log building?

A. Yes.

Q. How far to the north?

A. Twenty-four feet.

Q. And then what size was that frame building that Campbell put up? Did the building adjoin the log building?

A. Yes.

Q. Not the first log building?

A. No, the second one.

Q. How far is the little frame building from the original building that 40 Logan put up?

A. About twelve or fourteen feet.

Q. North?

A. Yes.

Q. What size was that frame house that Campbell built?

A. I cannot tell you.

Q. About what size, just give me about?

A. Something like fifteen feet or a little more.

Q. By what?

A. By twelve, probably.

Q. And what year do you say Campbell put them up in?

A. I couldn't tell you.

Q. What do you think?

A. It was after the white house had been built—1872 or 1873 probably.

Q. And Logan afterwards lived in his house, did he not?

A. Yes.

Q. And when did Logan commence to live in it? In '72 or '73?

A. Could not say. He hired some other parties who were living in it before he moved in.

Q. When do you say Logan commenced to live there?

A. Not later than 1873. I couldn't tell you.

Q. Later than 1874, just give us as near as you can?

A. It might be 1872, as late as 1874. It would be just a guess.

Q. You think it would be between 1872 and 1874 sometime.

No answer.

Q. And then did Logan join the little log house and that frame house by putting another one between?

A. No that log building that you speak of was just—

Q. Logan's building, then, was enlarged by him by another building to the north of it?

A. Yes.

Q. That was before the frame building was put up?

A. Yes.

Q. And what size was that second log building—about?

A. It was the same width as the old one, 12 x 14, I think.

Q. Then, Campbell's frame building commenced immediately after the added log building?

A. Yes, on the north.

Q. I understood you to say that Logan lived in that frame building?

A. Afterwards.

Q. Do you know who was living in that frame building, or if anyone was, at the time of the patent?

A. I cannot say, it may have been Logan himself.

Q. And who was living in the white building at the time of the patent?

A. Somebody was, I couldn't tell you. I cannot remember.

A. Can you say whether this plan shows approximately the position of this building you have been speaking of?

A. The plan shows the relative position of the building.

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Exhibit 26 is a certified copy of an agreement between Fonseca and Schultz dated 17th November, 1879, and goes in by consent instead of original.

Mr. Ewart (to witness)

Q. This is the deed, Mr. Fonseca, which you made to Dr. Schultz, in pursuance of an agreement, Exhibit 15, dated 24th December, 1879?

A. Yes.

Q. And that is the only deed which you made in pursuance of that agreement is it?

A. Yes.

Re-examined by Mr. Howell :

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Q. Under the agreement Dr. Schultz was entitled to a share of C, D, E and F, was he not?

A. Yes.

Q. Did you know that this deed didn't cover C, D, E and F?

A. Didn't find it out till a very long time after.

Q. It covers it in general terms?

A. Just to include all the lands which my patent covers.

Q. And in the latter description it is apparently left out?

A. Yes.

Q. That was a mistake. Has that been made good since?

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A. Yes.

Q. By other conveyance?

A. Yes.

Mr. Ewart objects that this is a question of producing the deed.

His Lordship thinks that the deed is good and covers all the land contained in the patent. The general words of description are wide enough to cover all the lots, if the particular description does not cover them all. In my opinion the general words convey the lands.

Mr. Howell (to witness)

Q. Mr. Fonseca, in answer to my learned friend you said that you executed no 30 other conveyance beside that one for the purpose of carrying out that agreement.

A. I didn't understand Mr. Ewart at that time. There was another conveyance.

Q. Is that conveyance registered?

A. Yes.

Q. And conveying this C, D, E and F?

Mr Ewart objects to this question.

Mr. Howell (to witness)

Q. You did execute another deed in reference to that agreement?

A. Yes.

Q. And it was after you discovered the error in that deed?

A. Yes.

Q. Now Mr. Fonseca at the time you got the patent of the land in question was there a large quantity of unpatented land near this?

Mr. Ewart objects that this is a leading question, because Mr. Fonseca cannot possibly tell what is unpatented.

Mr. Howell (to witness)

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Q. Did you make any investigation as to what lots were patented?

A. I knew it from our accounts of the lots. I knew it from the map and from what was occupied and disposed of by the Government and I kept track of it.

Q. Well, now, since after—since you got your patent—since February, 1879, all the Point holders have got their patents, have they not—at least a considerable number?

A. Yes. They got acre for acre all except one of the patents, and that is because—

Q. Never mind about that. For how many lots did you get patents?

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A. One hundred and sixty-one.

Q. One hundred and sixty-one lots on the Reserve on account of your Point Douglas holding?

A. Yes.

Q. Under the acre for acre order?

A. Yes.

Q. You got this patent after your patent was got. Do you know whether a large number of other patents were granted or not?

A. Yes.

Q. To the Point holders?

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A. Yes.

Q. Before or after 1879?

No answer.

Q. In what year?

A. I think it was in 1888. The patent was dated 1888.

Q. In allotting these lots to the Point holders, the Government gave the most easterly?

Mr. Ewart objects that this is a leading question.

Mr. Howell to (witness)

Q. In granting the patents to the Point holders, what lots of the Common did the Government grant to them?

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A. I am speaking conjecturally. There was quite a distribution. They were granted on the east side of Main street and on the west side of Main street.

Q. How much on the east side?

A. Quite a number of acres.

Q. Why did they not open it after on the east side?

A. They were all granted.

Q. Then in taking that for granted they had no ungranted lands east of Main street?

A. Yes.

Q. And then they commenced west of Main street and granted everything along there? 10

A. Yes.

Q. And this followed after they had all those cases west of Main street?

A. Yes.

Q. So that the result is—

Mr. Ewart objects.

Mr. Howell (to witness)

Q. You have already sworn that they granted the most easterly part of the Common that was ungranted?

A. They granted all the Point Douglass holders, in 1883, the most easterly part of the ungranted part of Point Douglass Common. 20

Q. Now, Mr. Fonseca, if you lose C, D, E and F, under this patent, how near can you get land to Main street?

A. A mile and a half.

Q. West of Main street?

A. Yes.

Mr. Ewart objects.

Mr. Howell to witness

Q. Well, now, Mr. Fonseca, if you had not got C, D, E and F in 1879 30 could you then have got equally valuable lands?

A. Pretty nearly so.

Q. Could you have got land on Main street?

A. It might be one or two streets to the north.

Q. North of the track?

A. Yes.

Q. Were there not some lands right there where Main street is? Was there or was there not one near Patterson's factory?

Mr. Ewart objects as a leading question.

Mr. Howell to witness :

Q. Now, Mr. Fonseca, in your affidavit, or rather, first let us commence, did you know anything of the promulgation of the order-in-council of May, 1877, giving acre for acre? Did you know about the time it was promulgated?

A. Certainly, I had the order sent to me.

Q. When did the trustees cease to act or to pretend to have any claim to the Common?

A. From that time.

Q. From the issue of that order. When did you make up your accounts to 10 put in your claim under the Manitoba Act?

A. Immediately after the issue of that order, as it suggested itself in the order.

Q. Now, when you swore the affidavit or declaration for Mr. Belch did you state truly that the trustees had ceased to have any claim upon the Common?

A. Certainly.

Q. And so they had no claim upon C, D, E and F?

A. No.

Q. You will remember signing Exhibit H of the Belch claim, the last two lines in writing in that declaration, was it written at the same time, or subsequently, that is, "except my claim, which I release and forego, as to the said Belch, of lots—Was that written at the same time or afterwards?"

A. I cannot remember. It doesn't look like the rest of my writing.

Q. Is it your writing?

A. No.

Q. Whose is it?

A. I cannot tell.

Q. In the third clause of this affidavit there appears as follows: "that that part of lot lettered C, described above, was in the occupation of Edmund L. Barber, prior to the 15th of July." In the fourth paragraph you say this, 30 "that the trustees of Point Douglas Common didn't claim any rights under or to the said land, but acknowledged the claim of those claiming through the said Logan and Barber respectively."

Q. Had the trustees anything to do with the lots then?

A. No, nothing whatever. That is merely what I say.

Q. Now, do you know who it was that put the names on Sinclair's plan of the parties.

A. I do.

Q. Do you think that you put them all on?

A. No, there are others put on not my writing; I do not remember, I put 40 some on.

Q. As I understand you, whenever a person came to the trustees to purchase one of these lots, they put the name down?

A. Yes.



Q. Whether they purchased or not ?

A. Yes.

Q. And they had the first right to purchase ?

A. Yes.

Q. Did Logan ever purchase from the trustees ?

A. No.

Q. I think you told My Lord that you have purchased from William Logan all the interest which he had, whatever he was in possession of ?

A. Yes, all parts of this land that he had claimed.

Q. At what time do you remember ?

A. At what time we bought do you mean ?

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Q. Yes.

A. Yes, what he bought is supposed to be on C.

Q. You bought out whatever interest he had ?

A. Yes, right through.

Q. And you also bought what another man named Jackson claimed in E ?

A. Yes.

Q. At the time of the patent or subsequent to that ?

A. After the patent.

Q. Yes, and you say you bought that for peace sake.

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A. Yes.

Q. Did anyone put in adverse claims to any part of E ?

A. This Jackson was the only man who pretended to have any claim to part of E.

Q. And you bought that from him ?

A. Yes.

Q. Then how much frontage did you buy from William Logan ?

A. Thirty-nine feet and a fraction, very nearly forty feet.

Q. On Main street ?

A. Yes.

Q. What is that a part of ?

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A. We supposed it was C.

Q. At all events it was what he was in possession of and he thought it was

O? If their evidence is true it would be a part of D also ?

A. Yes.

Q. Does anyone claim any adverse title against you for the thirty-nine feet ?

A. No.

Q. Now, as to lot B, what did you buy from Jackson ?

A. I bought one hundred feet, as far as I can remember, my lord, on Austin street ?

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Q. What would that be part of ?

A. It was supposed to be part of both these lots E and F ?

Q. Now, do you know what Mr. Belch's occupation was in 1877 ?

A. I cannot say.

Q. What occupation was he following ?



A. One of the clerks in the land office here in 1877.

Q. A commissioner, or senior clerk, or how do you know?

A. I couldn't state the position.

Q. Now, with regard to lot B, do you know in what way or by what means or by what right Barber had built—in what way was he entitled to it under the Manitoba Act? He was in possession at the time of the transfer?

A. Yes.

Q. What was the reason that Logan's name was put upon C?

A. He was a clerk—it was supposed that he was put there. He would afterwards purchase as all others were put on in that way and charged with it. 10

Q. Now, you seem to know where all the unpatented lands are, tell me how you know what lands are unpatented on the Point Douglas Common.

A. If you will show me the map I will show exactly.

Q. I ask you how you know what is unpatented?

A. I know because I have been so interested and mixed up with this land that I know what has been patented and what has not.

Q. I ask you how do you know what is unpatented now?

A. I know it of my own knowledge.

Q. How do you get your information?

A. The Government records. 20

Q. How do you know what lands are unpatented?

A. I know it from the Department.

Q. The Land Office here at Winnipeg or the Department down at Ottawa?

A. Yes.

Q. When did you last make any search, now, at Ottawa?

A. 1888, I was then there.

Q. I ask you when you made any search for what lands were unpatented at Ottawa

A. Not since then.

Q. Did you, at that time, make a search to find out what lands were unpatented?

A. No, it was not necessary.

Q. What did you do at the Department in order to find out what lands were unpatented?

A. I did nothing, my lord, it was not necessary. I know the lines of the map what the Government had distributed, how far it went out west and the residue was kept out by the Department.

Q. What do you mean by distributed?

A. This allotment, acre for acre, took up just such a lot, such a street; I was there present at the distribution and I had a list. 40

Q. Did you have any other information as to what lands were unpatented?

A. No, I am quite certain.

Q. Have you the deed from Logan to yourself?

A. No.

Mr. Ewart: I will ask my learned friend to produce it.

Mr. Howell refuses.

Q. Original agreement or copies of agreement between you and Schultz, or you and Logan, respecting lots C, D, E and F, or any portion thereof—I have taken off part of the plan I have showed you just now relating to the buildings. Now, does this approximately show the relative positions of the buildings?

A. Yes. The buildings show their relative positions in the sketch, put in, marked Exhibit 27.

Q. When you say that the relative positions are shown, you do not mean the distances or scale?

A. No, not at all.

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The examination of John Christian Schultz taken de bene esse was then put in and read.

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DEPOSITIONS

OF

W. M. MATHESON, E. G. PULFORD AND A. M. BURGESS,

PUT IN BY THE INFORMANT.

Depositions of witnesses examined in the above action at the City of Ottawa, in the Province of Ontario, before me, in pursuance of the order made herein, dated the 15th day of February, A. D. 1886, sworn this 5th day of March, A. D. 1886.

(Sd) J. BISHOP,
Special Examiner. 10

Mr. Gormully for the Informant,

Mr. Christie for defendant Schultz, and

Mr. MacCraken for defendant Fonseca.

I, William Marshall Matheson, at my office in the Court House in the City of Ottawa, called by the Informant, sworn, say :

My name is William Marshall Matheson. I am 53 years old. I am one of the Masters of the Supreme Court of Judicature for Ontario, Deputy Registrar of the High Court of Justice, Chancery Division. I acted as special examiner in a suit depending in this Court, wherein Eliza Mercer was plaintiff, and William Gomez Fonseca, John Christian Schultz and Her Majesty's Attorney-General for Canada were defendants. I produce the order appointing me as such special examiner, Ex. A. 20

Mr. McCracken and Mr. Christie object on behalf of defendants they represent to the proof and reading of any papers in the suit last mentioned.

I knew Col. John Stoughton Dennis. I believe he is dead. I knew him for nearly 30 years. He was a Provincial Land Surveyor. He was Surveyor-General and afterwards Deputy-Minister of Interior. He was examined by me as a witness in the last mentioned suit, under the authority of the said order marked A. He was examined on the 4th day of November, 1884. Prior to his said examination, he was duly sworn by me. I can produce the original depositions sworn to by him on that occasion. 30

I produce them, signed by Col. Dennis, marked B.

Ex. B objected to being produced and read by Mr. Christie and Mr. McCracken.

Those depositions contain the whole testimony given by him on that occasion.

The exhibits A. B. C. D. E. annexed to said depositions are copies of certain papers referred to in said depositions and marked as exhibits thereto (being copies of originals. (Objected to as above.)

At the said examination of said Col. Dennis the following counsel were present :— Mr. Gormully for plaintiff, Mr. Christie for the defendants other than the Attorney General for Canada and Mr. Hogg for the said Attorney General. I knew Robert Lang; I have known him for upwards of four years. He was a clerk in the Department of the Interior of Canada. He was examined by me in the said last mentioned suit under the authority of said exhibit "A" on the 26th December, 1883.

I can produce the original depositions sworn to by him on that occasion.

I produce them Ex. C., Ex. C. [Mr Christie and Mr. McCracken object to their being read or produced in this action.] 10

Prior to said examination he was duly sworn by me. The said Ex. C. contains the whole of the testimony given by him on that occasion. Those depositions are signed by Robert Lang. On said examination Mr. Gormully appeared for the plaintiff and Mr. Christie for defendants Fonseca and Schultz.

[Subject to the objections.] Mr. Christie cross-examined witness.

The evidence of Col. Dennis was not taken down by me. It was taken down by A. Holland, a short-hand writer.

Re-examined by Mr. Gormully.

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Robert Lang's evidence was taken down by me.

Andrew Holland the short-hand writer in question was duly sworn before acting as short-hand writer therein by me. The evidence was taken in my presence.

Objected to by Mr. Christie on the ground that Mr. Matheson had no right to swear Mr. Holland.

I did not compare the copies of said exhibits with the originals. When the examination of Robert Lang was taken the said Attorney General was not a party to said last mentioned suit.

(Sd.) W. M. MATHESON.

I, Ernest George Pulford called by the Informant sworn say :—

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My age is 39. I am a clerk in the Civil Service of Canada. I knew Col. John Stoughton Dennis. He was my father-in-law. He is dead. He died on the 7th of July 1885. I saw him lying dead in his coffin on the 8th of July 1885 at his own house. I attended his funeral. His last occupation in the Civil Service of Canada was the Deputy of the Minister of the Interior.

(Sd.) E. G. PULFORD.

April 29th, 1886.

Counsel present Mr. Gormully, for Attorney-General, Mr. J. Christie, for defendant, Schultz, and MacCracken, for Fonseca.

I, Andrew Holland, called by the Informant, being duly sworn, say :—

I am 41 years of age.

I knew John Stoughton Dennis.

I am a shorthand writer.

I took the evidence of John Stoughton Dennis, in the certain suit in the Queen's Bench in Equity wherein Eliza Mercer was plaintiff, and William Gomez Fonseca and John Schultz and Her Majesty's Attorney-General for Canada, were defendants, on the 4th of November, 1884. On that occasion Mr. Gormully, appeared for the plaintiff, 10 Mr A. J. Christie, appeared for defendants, Fonseca and Schultz, and Mr. Hogg, for the Attorney-General.

Objected to by Mr. Christie and Mr. MacCracken, to the reading or proof of any papers purporting to be proceedings in the suit of Mercer vs. Fonseca.

This Exhibit "B," now shown to me is the original transcript of my notes of Mr. Dennis' evidence on that occasion, Exhibit "B" contains his sworn testimony on that occasion as sworn to in my presence.

By Mr. Christie,

Exhibit "B" is a transcript of my notes as dictated by me and was not written by me, but was written from my dictation on a type-writer. It was done as a whole within 3 hours after it was taken, and the witness was not present when it was 20 transcribed.

By Mr. Gormully,

I read Exhibit "B," over the day on which it was transcribed. It was a correct transcript of my notes. I have no recollection of being sworn on that occasion. I believe Mr. Dennis is dead.

(Signed,)

A. HOLLAND.

April 29th, 1886.

Same Counsel present.

I, Alexander McKinnon Burgess, called by Informant, being duly sworn, say :— 30

I am 35 years of age.

I am the Deputy of the Minister of the Interior for Canada.

I knew John Stoughton Dennis. In 1879, he held the same office as I hold now, he held it until December 31st, 1881.

I know Lot 35 Point Douglas Common a great portion of which is now within the limits of the City of Winnipeg. It was in the old Parish of St. John.

The petition of the Point Douglas holders for a grant to them from the Crown of the whole of Point Douglas Common is now I believe in the City of Winnipeg. It was sent from the Department of the Interior to the Commissioner of Dominion Lands at Winnipeg, for use in this suit. That claim was disposed of by an order in Council dated 10th May, 1877, a certified copy of which is with the other papers in Winnipeg. I produce the Original of a petition dated July 26th, 1877, marked Exhibit "D," from the defendant Fonseca to the Hon. The Minister of the Interior, claiming a portion of said Lot 35.

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I produce the original of a letter from W. G. Fonseca, dated 3rd October, 1878, with a schedule of lots annexed marked Exhibit "E." In that schedule lots "C," "D," and "E," are represented as having been disposed of to William Logan, out of W. G. Fonseca's claim on Point Douglas Common and Lot F to Kew, Stobart & Co. The lands claimed in this suit are comprised in said lots C, D, E and F, in Block 14.

I produce a letter from W. G. Fonseca to Col. Dennis, Deputy-Minister of the Interior, dated 22nd May, 1879, marked Ex. F.

I produce the Surveyor-General's report, marked Ex. G., dated 3rd February, 1879, dealing with the said claim of Fonseca concurred in by Col. Dennis, then Deputy-Minister, and approved of by the Right Hon. Sir J. A. Macdonald.

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Adjourned at 4.30 p.m. until Saturday, May 1st, 1886, at 1.30 at Examiner's Office, Sparks street, Ottawa.

May 1st, 1886—1.30 p.m.

Same Counsel present as on preceeding day.

Examination of Alexander McKinnon Burgess resumed—

That report of the Surveyor-General recommended that a certain quantity of land on Point Douglas Common, which added to the portion actually enclosed by Fonseca, would make 25 acres should be granted to him. The additional pieces to make up the 25 acres which Fonseca was recommended by this report to get, and which both the Deputy and the Minister approved that he should get, would have to be selected afterwards.

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A patent was afterwards issued to Fonseca in December, 1879.

I produce a Statutory Declaration of Fonseca, dated July 5th, 1879, marked Ex. H. It is attached to an application of Alex. J. Belch for portions of lots C, F. and G. Lots C. and F. are a portion of the lands in question in this suit. This declaration was in the office of the Dominion Lands at Winnipeg during the whole of the year 1879. It was mislaid. It was discovered in 1881.

The patent to Fonseca issued in December, 1879, was with the intention, as an act of grace, of granting to Fonseca 25 acres on Point Douglas Common, including his own actual inclosures, in pursuance of the recommendation Ex. G.

This patent included lots C. D. E. and F.

Objected to by Mr. Christie and Mr. McCracken on the ground that patent not produced, and if produced would speak for itself.

Q. Was there any error in that patent to Fonseca?

Question objected to on ground that witness cannot speak from his own knowledge.

Not answered, not pressed.

I produce a letter marked Ex. J., dated 5th July, 1880, from Fonseca to the 10 Surveyor-General. With reference to the lots mentioned in this letter the titles granted to the persons mentioned in said letter by the Point Douglas trustees were admitted by the Government, and other lands in lieu of these lands were granted by the Crown to Fonseca.

I have been in the Department of Interior since 1876.

Q. Is there, or is there not, in the Department of Interior any practice with reference to the disposition of Crown lands in which persons are in possession in dealing with such lands?

Objected to by both Counsel on ground that you cannot establish a usage in the Department of the Interior as to dealings with applications other than as established 20 by the Act under which the application has been made.

A. Yes.

The practice has been to give the party in possession by actual residence and cultivation the first opportunity to acquire the lands on such terms as the Government may be disposing of such lands upon. This has been the practice with reference to lands in Manitoba, since the Government acquired them.

The existence of improvements govern the practice of the Department to some extent, even when there has been no actual residence. What I mean is, that suppose a man is in possession of a piece of land by residence or valuable improvements, and another person applies to purchase that land, the Government would give the former the first 30 opportunity to purchase that land.



The circumstances of Logan's possession are disclosed in the papers on record in the Department of Interior.

Q. As Deputy head of the Department of Interior from your knowledge of the practice of the Department, would, or would not a patent have been ordered to be issued to Fonseca of Lots C, D, E, and F, if the Minister of Interior or Deputy Minister had present to his mind the letters and declarations of Fonseca in Exhibits E, F, and H. at the time of making the order?

Objected to by Counsel for defendants because it is not relevant, and because it asks for the opinion of Witness on supposed case upon a matter that has occurred when Witness was not Deputy Minister and because what would be done under such 10 circumstances has already been shewn by the granting of the patent.

A. The Department would not have done so.

I knew a person called Robert Lany. He was an officer of the Department of the Interior, a clerk, having charge of business relating to claims under the Manitoba Act. He is not in Ottawa to my knowledge. I do not know where he is. He is not now in the Department. I last saw him about a year ago. He left on a few days leave of absence for Washington, in the United States, and has never returned to the Department since. He has been absent now without leave for more than twelve months.

The official record now before me marked Ex.K. shews that on the 30th July, 1879, the application of Mrs. Eliza Jane Belch and the application of Alex. J. Belch for 20 certain lands therein mentioned was received in the Department of the Interior at Ottawa. That the application of Mr. Belch had reference to a portion of the lands in question in this suit, and that on the 15th of August, 1879, the application of the Belch's and all the papers of record in the Department having relation thereto were referred to the Inspector of Surveys at Winnipeg to be dealt with in the usual course. They were not received back until the 18th June, 1881. The usual course was for the Inspector of Surveys to make a report upon the claim. He made no report upon that reference.

Except the application by the Belch's above referred to, the records shew that no persons claiming through William Logan or William Logan himself had filed any 30 claim to said Lots C, D, E, and F, nor by Kew, Stobart & Co. or persons claiming through them as to Lot F.

4:30, adjourned until Friday, May 7th, 1886, at 2 o'clock.

June 10th, 1886.

Counsel present, Mr. Gormully for the Informant, Mr. Christie, Q. C., for defendant Schultz, and Mr. McCracken for defendant Fonseca.

In answer to Mr. Gormully, Mr. Burgess' examination resumed.

All the documents that have been produced by me are documents on record in the Department of Interior and are produced by me as the custodian thereof.

Cross-examined by Mr. McCracken, 1.20 o'clock.

Adjourned until the 7th July at 11 o'clock.

July 7th, 1886.

Cross-examination of Mr. Burgess continued by Mr. McCracken, on behalf of defendant Fonseca.

No. 1. Were you examined under Commission in the suit of Mercer v. Fonseca and the Attorney-General at Ottawa on the 4th day of November, 1884, and following days: and do you know that upon these examinations the whole point of the plaintiff Mercer (who is the Relator herein) was to establish that Logan was in possession on the 15th July, 1870.

Objected to by Mr. Gormully on grounds that suit speaks for itself.

A. I was examined under Commission in the suit Mercer v. Fonseca and the Attorney-General on the date mentioned and following days; and according to the best of my recollection the object of the plaintiff in that case was to establish that Logan was in possession on the 15th July, 1870, but I am not in a position to state that that was the whole point.

2. Now that the Relator has by the present Information abandoned her claim under the Manitoba Act, or in any other of the ways that patents have been granted to parts of the said Common, and sets up a claim to a patent because of the said Logan, through whom she claims, having gone into possession and made improvements at a time subsequent to the 15th July, 1870, would it not be error or improvidence to grant such a patent as against Fonseca, whose allotment of the 3rd February, 1879, under the Manitoba Act, includes within its area and range the said Lots C. D. E. and F.

A. The statement of fact contained in this question that the relator has abandoned her claim to obtain a patent in any other of the ways than under the Manitoba Act that patents have been granted for parts of Point Douglas Common is not, according to my understanding, quite accurate. Portions of the Common have been disposed of by the Government of Canada to claimants by virtue of occupation subsequent to the time of the transfer. I give as examples the lots sold to the Trustees of the Winnipeg General Hospital, and the lots granted to the City of Winnipeg for Quarantine Hospital purposes. The station grounds of the Canadian Pacific Railway Company, part of which have been granted by the Government under the Company's Charter, and the remainder of which the Company have the right to purchase, are also situated on Point Douglas Common. Nor is it the fact that the allotment of the 3rd February, 1879, made to Fonseca, was an allotment under the Manitoba Act, but an allotment made by the Minister of the Interior by virtue of the powers conferred upon him by the Dominion Lands Act. It would not, in my opinion, be error or improvidence to grant a patent to Logan or his assigns upon such terms and conditions as the Minister of the Interior might prescribe having in view the long period during which the evidence before the Department shows Logan to have been in occupation.

3. In the said former examination you stated: "In August, 1878, I have reason to believe that Col. Dennis examined into the Point Douglas question on the ground, he told me, so he made it part of his business." Do you know anything of this statement or do you agree with the fact? And further says "Merely with Fonseca's letter of October 3, 1878, I would not have called upon Logan, to contest the issue but I would have called on Fonseca, for explanation." Do you agree with this statement, and if not in what respect do you disagree with it?

A. There is nothing in the statements above quoted which I would wish to change. They are, to the best of my knowledge and belief, correct.

4. And further the question is asked you Mr. Burgess, "If 'A,' had made a representation that 'B,' was the owner of a lot would you issue a patent to 'A,' without giving notice to 'B'?" to which you Mr. Burgess answered:

"Had there been no claim of 'B,' before the Department and the only communication relative to that claim had been the statement of 'A,' I should have satisfied myself with communicating with 'A,' on the subject. We have Registrar's abstracts to all of Lot 244 Hudson's Bay Company's survey, or Lot 35 St. John."

Do you agree with this answer and if not in what respect do you disagree?

Question objected to by Mr. Gormully.



A. Upon reflection and assuming that this is the whole of the statement which I made upon the subject, I desire to add that under the circumstances mentioned in the question, I should also have asked for a report from the Agent of the Department for the district in which the land was situated.

5. At the time of Fonseca's application for patent was there any evidence of any claim of other parties.

A. At the date of Mr. Fonseca's petition (Exhibit D), that is to say, the 26th day of July, 1877, when he applied for the southern 10 chains of Lot 35, there was no other application before the Department for the lands now in question.

6. Was Fonseca one of the original applicants as a Trustee for what was known as 10 the Point Holders?

A. Yes.

7. Did the said Point Holders claim from the Government the whole of Lot 244 Hudson's Bay survey or what is now known as Lot No. 35 of the Dominion Government survey? Give date of claim and by whom.

A. Yes; they claimed the whole lot. The papers of record in the Department having reference to the claim of the Point Holders are at the present time in Winnipeg for the purposes of another suit. I should prefer to have the papers before me before answering the latter part of this question.

8. Did the said Trustees claim first as the absolute owners because of those from 20 whom they claimed having derived title directly through the late Lord Selkirk and in the event of this mode of title not having been acknowledged by the Government then that the said Trustees might be considered as applying under what was then known as the "Manitoba Act?"

A. Yes.

9. Was the application of the said Trustees acknowledged on either one of the above grounds, and if not why not, and when and how was the matter determined by the Government?

A. No: the reasons are fully set forth in the Order-in-Council of the 10th May, 1877, and the memorandum of the Honourable David Mills, Minister of the 30 Interior, of the 7th of the same month, which forms part of the said Order. Printed copies of the Order and of the memorandum alluded to are now produced, marked L. and M. These I have certified in my official capacity as Deputy Minister of the Interior to be correct.

10. Upon what grounds was the application of the Trustees refused ?

A. The grounds of the refusal of the application of the Trustees are fully set forth in the memorandum of the Honourable David Mills of the 7th May, 1877. Ex. M.

11. At the time of the refusal of the application of the said Trustees was it expressly provided that the most easterly portion of said Lot 244 should be designated as Parish Lot 12 (being the property of the late Neil McDonald) so long as said Lot 12 did not interfere with the rights of parties making out title under the Manitoba Act ?

A. The memorandum of the Hon. Mr. Mills of the 7th May, 1877, alluded to in the answer to the next preceding question, provides that the lands so patented shall be bounded next to the river by the rear of the lots as originally laid out (the lot owned by the family of the late Neil McDonald to be considered as one of such lots) but not to be held to include any land for which a right to patent might be established under the Manitoba Act or the Act 38 Vic., Cap. 52, on the said property.

12. After the application of the said Trustees was refused did some of the Trustees in their individual capacity, or did others for whom they had been acting, make fresh applications for portions of said Lot No. 35, basing their rights to patents from the Government upon the said Act known as the "Manitoba Act ?"

A. Yes.

13. After the determination of the application of the Trustees by the Government; 20 give the names of all parties who applied for patents for portions of said Lot No. 35 under the Manitoba Act.

A. The file of papers upon the subject of the claims of the Point Holders to lands in Point Douglas Common, to which I have already referred as being at the present time in Winnipeg, contains a list of the names of the persons referred to in this question. I could only speak of the names of the applicants from recollection; and the file of papers referred to would disclose absolutely who they were.

14. Was Hon. John Sutherland, E.L. Barber, Hon. John C. Schultz, John McTavish and the said Fonseca amongst those for whom the said Trustees acted in making the said first application ?

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A. They were.

15. Did John McTavish make application under the Manitoba Act for a portion of the said lot 35, and if so what was the date of his application ?

A. Mr. McTavish did make such application, the date of which the papers referred to in the answer to question number 13 will disclose.

16. Did the said McTavish pursuant to his said application obtain a patent from the Crown for a portion of the said Lot 35 under the said Manitoba Act, and if so what number of acres did he so obtain a patent for? and for what portion of said lot did he receive a patent?

A. Mr. McTavish obtained a patent under the Order-in-Council of the 10th May 1877, Exhibit N., Patent dated the 15th December, 1879, for

W. $\frac{1}{2}$ of Lot 13 in Block 3.

Lots 11, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 on the East side of Austin Street. 10

Lots 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 on the West side of Maple Street.

Lots 59, 63, 64, 65 and 66 on the East side of Maple Street.

Lots 82, 83, 84, 90, 91 on the West side of Meade Street.

Lots 92 and 93 on the East side of Meade Street. Area: 7 1-3 ac.

He also obtained a patent under the said Order-in-Council, patent bearing date the 12th April, 1883, for

Lots 1, 2, 3, 4 and 5 in Block 4.

Lot 132 on the East side of Main Street Area, $1\frac{1}{2}$ acres.

A patent, dated the 8th October, 1883, was issued to Mr. McTavish under the 20 authority of the Order-in-Council of the 10th May, 1877, for the following land:

Lots 3 and 4 in Block 8.

Lot 6 in Block 17 B.

Lot 20, Block 26.

Lots 3 and 20, Block 27.

Lot 12, Block 36.

Lot 23, Block 37.

Lots 11 and 18, Block 38.

Lot 6, Block 39.

Lot 7, Block 50.

Lots 2, 8 and 9, Block 52.

Lot 21, Block 53.

Lot 10, Block 56.

Lots 2 and 17, Block 59.

Lot 7, Block 61.

17. After the said determination of the application of the said Trustees, did the Honourable John C. Schuliz apply personally for a portion of said Lot 35 under the



Manitoba Act, and if so was a patent granted to him for the same, and off what portion of the said Lot. For how many acres did the Honourable John C. Schultz get a patent pursuant to his said application?

A. The Hon. John C. Schultz did apply for a portion of the lot in question. A patent, dated the 13th May, 1879, was issued to him under the said Order-in-Council for: That portion bounded on the east by the limit between the said Lot Number 35 and Lots Number 34 and 58 in the said Parish of St. John: on the north by the most northerly limit of the Lot Number 35 aforesaid; on the west by the most easterly limit of Aikens Street, as shown on the official map of the City of Winnipeg, drawn by George McPhillips Jr., City Surveyor of the said City of Winnipeg, the 29th May, 1877; and on the south by the most northerly limit of Stella Street and by the most southerly limit of Lot No. 26 in Block No. 7, and by the most southerly limit of Lot 24 in Block 5; all shown on the said official map of the City of Winnipeg, reserving thereout the w $\frac{1}{2}$ of Town Lot No. 29 and the south half of the west half of Town Lot No. 30, both in Block 5, as shown on the said official map, the streets and highways being also reserved thereout. Area, 20 acres

On the 24th January, 1880, a patent was issued to the Hon. Mr. Schultz under the said Order-in-Council for:

Lots 17, 18 and 19, Block 4,		20
E. $\frac{1}{2}$ of Lot 16,	" 4.	
Lot 15,	" 3.	
W. $\frac{1}{2}$ of Lot 9,	" 11.	
W. $\frac{1}{2}$ of Lot 14,	" 10.	
Lot 15,	" 10.	
Lot 18,	" 9.	
E. $\frac{1}{2}$ of Lot 23,	" 8.	
W. $\frac{1}{2}$ of Lot 8,	" 11.	Area: 3 3-4 acres.

On the 17th April, 1883, a patent under the said Order-in-Council, was issued to the Hon. Mr. Schultz, for:

E. $\frac{1}{2}$ of Lot 9 in Block 11,	30
Lot 19, in Block 9.	

Area: 3-4 of an acre.

On the 11th March, 1881, Lots 1 and 2, in Block 3, containing 4-10 of an acre, were patented to the Hon. Mr. Schultz, under the said Order-in-Council.

On the 9th May, 1883, a patent under the Order-in-Council of the 10th May, 1877, was issued to the Hon. Mr. Schultz, for:

Lot.	Block.	Lot.	Block.
9	13 B.	18	27
19	28	21	31
6 and 19	32	1	34
17 and 18	37	16	43
8 and 21	44	7	46
20 and 23	48	1 and 13	49
24	54	10 and 23	58
7 and 10	60	18	62
12	64	3	1

10

Area : 4.22 acres.

On the same date, namely, the 9th May, 1883, another patent under the Order-in-Council of the 10th May, 1877, was issued to Mr. Schultz, for :

Lot.	Block.	Lot.	Block.
15	32	23	33
11 and 12	34	8	36
2	37	10	38
12	41	1 and 7	45
9	47	18	49
10	52	2	54
2, 8, 9, and 15	57	24	59
1 and 16	63	14	64
1	66		

20

Contains 3.8 acres.

18. After the determination of the application of the Trustees, did E. L. Barber, make a personal application under the Manitoba Act for a portion of said lot 35, and if so pursuant to his said application did he obtain a patent from the Crown, and if so for how many acres and off what portion of the said lot ?

A. E. L. Barber, did make such application, and on the 30th March, 1883, a patent was issued to him under the Order-in-Council of the 10th May, 1877, for :

30

Lots B and G, Block 14.

E. $\frac{1}{2}$ of Lot 20, and E. $\frac{1}{2}$ of 21, in Block 4.

Area : 1 1-10 acres.

A further patent was issued to him on the 4th October, 1883, under the authority of the Order-in-Council of the 10th May, 1877, for :

Lot.	Block.	Lot.	Block.
5	9	9	13
6	13 B.	2	16 B.

5	22	8 and 10	29	
11	30	7	31	
13	32	4	34	
4	35	22	39	
18 and 24	43	22 and 23	44	
6	45	24	47	
9	48	24	49	
5	50	8	51	
7 and 15	52	12	53	
17	54	11	55	10
16	57	11	58	
18	59	1 and 11	61	
9 and 11	62	15	63	
9	65			

19. After the determination of the said application of the said Trustees, did the Honourable John Sutherland personally make application under the Manitoba Act for a portion of said Lot 35, and did the Government pursuant to said application grant him a patent for a portion of said Lot 35, and if so how many acres were included in his patent?

A. The Honourable John Sutherland did make such application, and patents were issued to him under the Order-in-Council of the 10th May, 1877, for part of the said Lot 35 covering an acreage of 6.47 acres. Two patents for portions of the lot were issued to him as Commutation grants, under the said Order.

20. After the determination of the application of the Trustees by the Government, did the defendant William G. Fonseca make application personally for a portion of said Lot 35 under the Manitoba Act, and if so did he obtain a patent pursuant to the said application, and if so for how many acres?

A. William G. Fonseca did make such application, and a patent for portions of the said lot was issued to him under the Order-in-Council of the 10th May, 1877. The area covered by that patent is 17 acres. A further patent under the said Order was issued to him as the assignee of E. L. Barber for a part of the lot covering $4\frac{1}{2}$ acres. A patent was also issued to him under the said Order for:

Lot.	Block.	Lot.	Block.
1	1	5	8
1, 3, 6, 9 & 10	9	3 & 7	13
8	13 B.	1, 9 & 10	16 B.
2, 4, 8 & 9	17	4	17 B.
6, 7 & 10	22	5 & 10	23

3 & 10	25	4, 11, 17, 19 & 21	26	
1, 4, 5 & 17	27	11, 12 & 22	28	
3	30	15, 16, 17, 20, 22 & 24	31	
3, 5, 7, 9, 11, 12, 17, 20 & 23	32	5, 6, 9, 11, 12 & 21 in	33	
24	33	2, 3, 6 & 7	34	
5 & 7	35	1, 5, 6 & 10	36	
5 & 20	37	4, 5, 9, 17, 20, 21, 22		
		& 23	38	
3, 21 & 23	39	11	40	
3 & 10	41	22 & 23	42	10
7, 10 & 22	43	6, 10, 12, 19, 20	44	
2, 4 & 5	45	2, 10 & 16	47	
1, 10, 17 & 19	48	2, 17 & 23	49	
1, 2 & 4	50	9	51	
6, 11, 12 & 22	52	3, 6 & 9	53	
14 & 21	54	1, 3, 6, 10, 12	55	
6, 7 & 11	56	1, 6, 11, 12, 14 & 17	57	
5, 7, 16 & 21	58	4, 5, 8, 10 & 22	59	
3, 4, 5 & 11	60	4, 6 & 12	61	
13 & 17	62	11, 14 & 20	63	20
2, 16, 20 & 22	64	11 & 12	65	

21. Give the dates of the patents to the Hon. John Sutherland, E. L. Barber, John McTavish, the defendant W. G. Fonseca, and Hon. John C. Schultz.

A. The dates of the patents issued to the Hon. John Sutherland are :

12th October, 1882.

19th March, 1883.

9th April, 1883.

18th September, 1883.

12th April, 1884.

The dates of the patents issued to E. L. Barber are :

30th March, 1883.

4th October, 1883.

The dates of the patents issued in favor of John McTavish are :

15th December, 1879.

12th April, 1883.

8th October, 1883.

The dates of the patents issued to W. G. Fonseca are :

5th December, 1879.

30th March, 1883.
28th September, 1883.

The dates of the patents issued to the Hon. John C. Schultz are :

13th May, 1879.
24th January, 1880.
11th March, 1881.
17th April, 1883.
9th May, 1883.
9th May, 1883.

With reference to the questions 14 to 21, Mr. Gormully objects to same so far as they relate to persons other than the defendants herein.

22. What office in the Department of the Interior did the late Col. Dennis fill in September, 1878 ?

A. Surveyor-General of Dominion Lands.

23. Do you know or do the records of the Department show that the said Col. Dennis was in Winnipeg about the month of September, 1878 ?

A. I know of my own personal knowledge and the records of the Department show that Col. Dennis was in Winnipeg in the month of September, 1878.

24. Do you know the object of the visit of Col. Dennis to Winnipeg at that time, viz., in September, 1878 ?

20

A. I do. His object was to facilitate the transaction of the general business of the Department.

25. For how many years prior to December, 1879, had the question of the ownership of Point Douglas Common and the various parts of it been before the Department of the Interior from the Government record and had the subject received much attention from the officers of the Department of the Interior ?

A. The report of the Honourable David Mills, of the 7th May, 1877, hereinbefore referred to, Exhibit M., shows, as do the other records of the Department, that these claims were brought to the notice of the Privy Council by the Minister of the Interior on the 3rd April, 1874, and they had been before the Department for a considerable time previous to that. The subject had received much attention from the officers of the Department.

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26. Do you remember seeing William Logan at Ottawa in 1878, or at any time pressing his claims to the lands in question in this cause?

A. I do not.

27. Is there any letter, paper or memoranda or any copy of such shewing that Defendant Fonseca, was required to forward to the Department of the Interior a list of persons in occupation of the southern Ten chains of said lot Thirty-five.

A. I can find no trace of any memorandum or copy of memorandum requiring Fonseca to forward the list mentioned, but Fonseca's letter of the 3rd October, 1878, (Exhibit "E") indicates that a suggestion that such a list should be forwarded was made to him by Col. Dennis, during the visit which the latter paid to Winnipeg in 10 September of that year.

28. Look at statements accompanying Fonseca's letter of the 3rd October, 1878, and say if other lots therein named were granted to the parties he pointed out as being the owners of Lots obtained from the Trustees and if they received Patents for the same from the Government.

A. Some of the lots mentioned in Mr. Fonseca's letter of the 3rd October, 1878, were patented to the parties mentioned therein. Others of the lots which were patented to Mr. Fonseca have been conveyed by him to various parties.

29. Was Fonseca mistaken in alleging in the statement accompanying the letter of the 3rd October, 1878, that Kew, Stobart & Co., were the owners of Lot "F" in the 20 survey in question.

A. I am not prepared to say that he was.

30. Upon investigation by the Government was it found that Kew, Stobart & Co., were not the owners of said Lot "F."

A. It was not found that they were.

31. Was a patent granted to Kew, Stobart & Co., of said Lot "F"?

A. No.

32. Why was a patent not given to Kew, Stobart & Co., of said Lot "F."

A. There is no evidence in the Department establishing Kew, Stobart & Co's claim; and consequently no patent has ever issued to them for the said lot "F."

33. In the statement of Fonseca, accompanying his letter of the 3rd October, 1878, do you find the name of Thomas Spence, as being the owner of Lots 2 and 4 in Block "F"?

Objected to by Mr. Gormully.

A. Yes.

34. Upon investigation by the Government was it found that Thomas Spence, was not the owner of said Lots 2 and 4?

Objected to by Mr. Gormully.

A. It was not found that he was.

35. Did Thomas Spence or anyone on his behalf get a patent from the Government for said lots 2 and 4 and if not, why did he not get a patent for the said lots. 10

A. No patent was granted to Thomas Spence or any one on his behalf for the said Lots 2 and 4, as there was no evidence filed in the Department establishing his claim thereto.

36. Was Fonseca mistaken in alleging that Spence was the owner of said Lots 2 and 4?

A. I am not prepared to say that he was mistaken.

37. In the said statement of Fonseca of the 3rd October, 1878, do you find the name of John Boskil as being the owner of Lot No. 3, Block E., in said survey?

A. Yes.

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38. Did John Boskil get a patent from the Crown for said Lot No. 3, Block E., and if not, why not?

A. No patent was issued to him for the lots in question, there being no evidence filed in the Department establishing his claim.

39. Was Fonseca wrong in alleging that Boskil was the owner of the said lot in such a way as to entitle Boskil to a patent for said Lot 3?

Mr. Gormully objects to questions 34 to 39.

A. I am not prepared to say that he was wrong.

40. In said statement of 3rd October, 1878, is it stated by Fonseca that William Logan is the owner of Lots C., D. and E. in Block 14?

A. Yes.

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41. Did said William Logan ever obtain a patent from the Crown for said Lots C. D. and E. in Block 14, and if not, why not?

A. No patent was issued to Logan for the lots in question.

42. Was Fonseca mistaken in saying that William Logan was the owner of said Lots C., D., E?

A. I am not prepared to say that he was mistaken.

43. In said statement of Fonseca dated the 3rd October, 1878, do you find that it is alleged that Thomas Spence was the owner of Lot No. 2, Block E, in this survey?

A. Yes.

44. Did Spence get a patent from Government for said Lot 2, Block E, and if not, why not?

Objected by Mr. Gormully.

A. There being no proof of Spence's claim filed in the Department, no patent was issued in his favor for the said lots.

45. Was Fonseca mistaken in alleging in the said statement that Spence was the owner of Lot 2 in Block E?

A. I am not prepared to say that he was mistaken.

46. How was this statement of Fonseca's of the 3rd October, 1878, received by the Department. Was it received as binding upon any parties concerned, or only a matter of opinion given to assist the Department in searching out the rightful owners of the various lots in question?

A. It was received as an acknowledgment on Fonseca's part that the persons whose names were mentioned in the schedule were, to the best of his knowledge, the owners of the lots set opposite the names. See his own statement in Paragraph 2 of Exhibit E.

47. In the whole of the cases enumerated above was it found that Fonseca was mistaken in the opinion expressed in the statement of the 3rd October, 1878.

A. It was not.

48. Was the Government in any way bound by Fonseca's statement of the 3rd October, 1878? or did the Government use its own discretion as to who was really entitled to lands before issuing patents for the same?



A. The Government was not bound by Mr. Fonseca's statement, and did use its own discretion as to who of those mentioned by him were entitled to patents.

49. Is it the general practice of the Government to be fully satisfied upon the very best available evidence as to what ought to be done in each individual case before issuing patents for lands?

A. Yes.

50. Was the letter and statement of Fonseca of the 3rd October, 1878, before the officers of the Department and the Minister at the time the patent for the seventeen acres of the 5th December, 1879, was made to Fonseca?

A. Yes.

10

51. Was the application of the defendant Fonseca, of the 26th July, 1877, made under the Manitoba Act? (Examine papers and answer this question fully).

A. Fonseca's application sets forth that prior to and on the 15th day of July, 1870, he was by himself, and through his servants, tenants, and agents, in actual peaceable possession of a portion of Lot number Thirty-five (No 35) in the Parish of St. John, according to the Dominion survey of River Lots, to wit, the southern Ten chains of said lot, commencing in the rear of the land or lot No. 11, owned by the late Neil McDonald, and thence running back the usual distance to the two mile limit.

This constituted an application under the Manitoba Act, and the Act 38 Victoria, Chapter 52, amending the same.

20

52. Was the patent for the seventeen acres in question granted upon Fonseca's application of the 26th July, 1877?

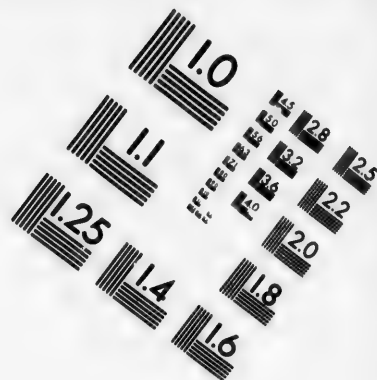
A. Fonseca obtained a patent under the Order-in-Council of the 10th May, 1877, and the Departmental order of the 3rd February, 1879, for an area of 17 acres. The memorandum of the 3rd February, 1879, (Exhibit "G") refers to the claim preferred by Mr. Fonseca, for a grant to him under the Manitoba Act of a certain portion of the Point Douglas Common, but does not allude particularly to the application of the 26th July, nor to any of the other applications to the same effect subsequently made by Mr. Fonseca.

53. Was the claim of Fonseca of the 26th July, 1877, approved by the Government or by the Department of the Interior as shewn by the Order-in-Council of the 3rd February, 1879?

30

A. There is no Order-in-Council of the 3rd February, 1879, on this subject.





Resolution test chart showing patterns of vertical and horizontal lines with numerical values ranging from 1.0 to 4.0.

6"



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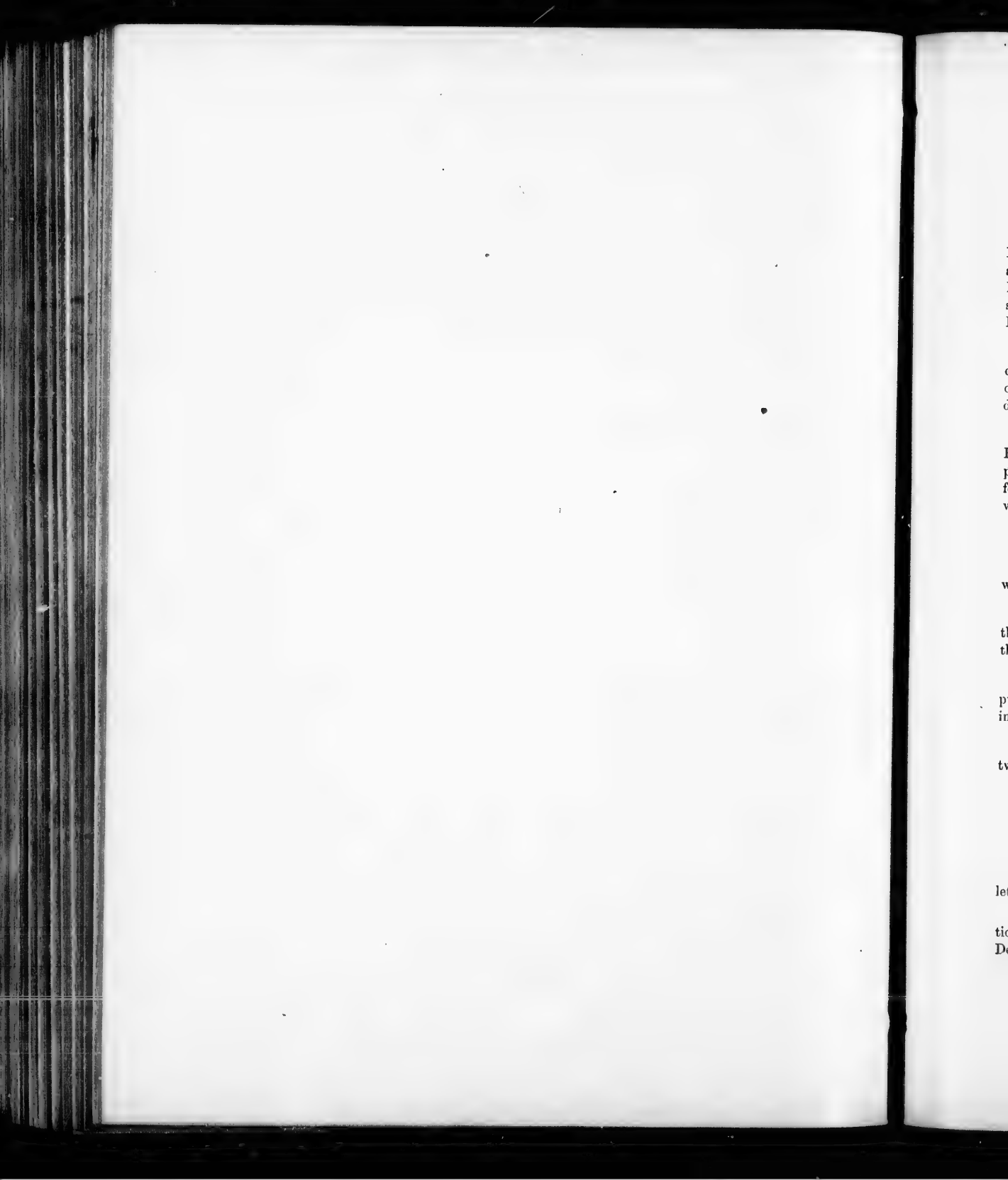


Exhibit "G," being a memorandum of the Surveyor General, recommended for favourable consideration by the Deputy-Head of the Department, and approved by the Minister, is, as a matter of fact, an order of the Minister of the Interior. That order shows that the claim of Fonseca of the 26th July, 1877, was not approved by the Department of the Interior.

54. Under Fonseca's application of the 26th July, 1877, when was a determination come to to grant him a patent and was that determination come to by way of compromise on the part of the Government, and how many acres were granted to him under said determination, and under what Act of Parliament was the said grant made to him?

A. The determination was arrived at in regard to Fonseca's application of the 3rd 10 February, 1879. See Exhibit "G." That determination was come to by way of compromise; and an area of 17 acres was granted to him under the general powers conferred by the Dominion Lands Act, upon the Governor-in-Council, in accordance with which the order of the 10th May, 1877, was passed.

55. Out of what lands was Fonseca to receive said grant?

A. Part was to consist of his own enclosures, and the remainder from lands elsewhere on Point Douglas Common.

56. Were the lands to be granted to Fonseca out of any Crown lands then held by the Government to satisfy the compromise in his favor so that the same came out of the 10 chains included in his said application?

20

A. The memorandum of the 3rd February, 1879, (Exhibit G.) does not specifically provide that the land to be granted Fonseca should come out of the 10 chains included in his application, but that would appear to be the intention of the memorandum.

57. Was the defendant Fonseca by the terms of said compromise to have received twenty-five acres?

A. Yes.

58. How many acres were granted to defendant Fonseca by said patent?

A. Seventeen acres.

59. Did Government not desire, owing to the limited number of acres granted, to let defendant Fonseca have the lands as nearly as possible adjoining his residence?

30

A. Exhibit G. does not say so specifically, but that would appear to be the intention. I may further say that that would be in accordance with the practice of the Department.



60. Was Fonseca present when the selection of the lands named in his patent was made?

A. The record does not show.

61. Did the defendant Fonseca to your knowledge use any influence with the Government to have any particular lands granted to him or to deprive any person of any particular lands?

A. No, not to my knowledge,

62. Do you know if the defendant Schultz used any influence to get any particular lands included in the patent to Fonseca?

A. I do not know.

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63. Is there anything to show that the Government in any way extended favors to the defendant Schultz in the granting of the said lands to the defendant Fonseca?

A. There is nothing in the record to show that the Government did in any way extend favors to Senator Schultz in the granting of the said lands to Fonseca?

64. Who was the Surveyor-General on the 3rd of February, 1879, and was the granting of the lands to Fonseca approved of in writing by him?

A. Mr. Lindsay Russell was Surveyor-General on the 3rd February, 1879. Mr. Russell's memorandum of the 3rd February, 1879, (Exhibit G.) does not specify the particular twenty-five acres of land to be granted to Fonseca. After a careful search through the records of the Department I can find no approval in the writing of the Surveyor-General of the particular tract of land to be patented to Mr. Fonseca.

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65. Who was the Deputy-Minister of the Interior on the 3rd February, 1879, and was the granting of the said lands to the defendant Fonseca approved of in writing by him?

A. Lieutenant-Colonel John Stoughton Dennis was Deputy-Minister of the Interior on the 3rd February, 1879. He signed the patent to Fonseca in which the lands granted to Fonseca were described.

66. Was the Right Hon. Sir John Macdonald Minister of the Interior on the 3rd February, 1879, and was the granting of the said lands to the defendant Fonseca approved of by him in writing?

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A. The Right Hon. Sir John A. Macdonald was Minister of the Interior on the 3rd



February, 1879, and his approval of the memorandum of that date (Exhibit G) is marked on the face of the said memorandum in his own writing; but a careful search of the records shows that he did not approve in writing of the particular tract of land to be patented to Fonseca.

67. Have you any reason to believe that the said Lindsay Russell, Surveyor-General, Col. Dennis, Deputy Minister of the Interior, or the Minister of the Interior were in any way unduly influenced favorable to the defendant Fonseca in making the grant of the said lands to him?

A. I have not.

68. Can you point to any evidence in the Department to show that adverse claims were not gone into, or that favouritism was extended to Fonseca in any way in obtaining the patent for the said lands? 10

A. There is no evidence in the Department that any favouritism was extended to Fonseca in any way in obtaining the patent for the said lands, but it is shown by the record that the adverse claim filed on behalf of Logan for the lots now in question was received in the Department on the 30th July, 1879, subsequent to the date of Exhibit G., authorizing the granting of 25 acres to Fonseca, but prior to the date of the fiat from the Department of the Interior, signed by Mr. A. Russell for the Surveyor-General, being sent to the Department of the Secretary of State for the preparation of the patent, which fiat contained a description of the lands ultimately patented to Fonseca; and the record further discloses that at the time when the fiat was sent to the Department of the Secretary of State, the papers having reference to the claim of Logan were not gone into, but had been referred on the 15th August, 1879, to the Inspector of Surveys at Winnipeg, with whom they remained until 1881, on the 18th of June of which year they were received back in the Department of the Interior. 20

69. Was the application of defendant Fonseca dated 26th July, 1877, before the officers of the Department on the 3rd February, 1879, when the order was made to grant him a patent for twenty-five acres, and was that application supported by the ordinary evidence upon which patents are granted? 30

A. That application was before the Department of the Interior, and was, so far as concerned the actual inclosures, supported by the ordinary evidence on which patents under the Manitoba Act are granted.

70. After the finding and determination of the Department on the 3rd February, 1879, was there ever any doubt but what that finding and determination would be carried out by the Government?

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A. None that I am aware of, nor have I any reason to believe that there was any doubt.

71. What was the cause of the delay in issuing the patent from the 3rd February 1879, to the 5th December of the same year ?

A. A letter was written from the Department to Mr. Fonseca on the 31st May, 1879, informing him that on the receipt at the Department of a certain plan then in course of preparation by the Inspector of Surveys his patent would be prepared.

72. Were there a great many applications for patents then awaiting their turn to be issued by the Government ?

A. There were.

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73. Were there similar delays in the issue of other patents pending at the same time ?

A. There were.

74. Do you know that Logan being a brother-in-law of defendant Fonseca, he Fonseca, was quite willing to make Logan's claim to C., D., E., appear favourable so that he, Logan, might make out the best case he could to found his right to the same ?

A. Personally, I do not know that Logan is a brother-in-law of the defendant Fonseca, although I have heard so and believe it to be the case. As to the remainder of the question, I am not in a position to give any answer.

75. Do you know that in July, 1879, one Belch made application for a patent for 20 parts of Lots C. and F., claiming through the said William Logan ?

A. Yes.

76. Was a patent ever granted to said Belch pursuant to his said application, or to any one on his behalf ?

A. No.

77. On the application of the said Belch did defendant Fonseca make a declaration in which he alleged that the Trustees of Point Douglas Common did not claim the property ?

Objected to by Mr. Gormully.

A. Paragraph 4 of the declaration of W. G. Fonseca of the 5th July, 1879, in 30 support of Logan's claim to the lots now in question is as follows :—

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" That the Trustees of Point Douglas Common did not claim any rights in or to the said lots, but acknowledge the title of those claiming through the said Logan and Barber, respectively."

78. In the said declaration of the defendant Fonseca, does he allege that he is the only person who has a right to the lots "C" and "F," and that he waives his claim in favour of Logan or Belch?

Objected to by Mr. Gormully.

A. Paragraph 5 of the declaration referred to in the answer to the next preceding question is as follows:—

" I do not know any claim to the said lots adverse to that of the above-mentioned Alexander J. Belch, except a claim of my own, which I release and forego as to the said portions of lots." 10

79. Does the defendant Fonseca, in said declaration state that Logan, was in possession of Lots C and F, on and prior to the 15th July, 1870, or does he merely allege that Logan, was in possession in the year 1870?

Objected to by Mr. Gormully.

A. Paragraph 2 of the declaration referred to in the answers to the two next preceding questions is as follows:—

" That one William Logan, was in occupation of the said portions of lots letters C and F, in the year of Our Lord one thousand eight hundred and seventy, and the same has been since occupied by him and those claiming under him." 20

80. Is there any evidence on record that Belch's application was satisfactory and that a patent should issue to him for Lots C and F?

A. I do not understand this question. I particularly do not understand what is meant by the term "satisfactory." The affidavit of Alexander Logan, dated 8th July, 1879, furnished by Belch's Solicitors with their letter of application dated the 23rd July, 1879, states that William Logan was in possession of the lots now in question prior to the 15th July, 1870. That affidavit was in the usual form recognized by the Department as proving occupation at the time of the transfer, but as the affidavit of Fonseca of the 5th July, 1879, which also accompanied the application of Belch's Solicitors, merely referred to the occupation as being in the year 1870, but did not specifically state that it was on prior to the 15th day of July, 1870, the date of the transfer, further evidence of occupation on the said 15th day of July, 1870, would have been necessary to prove a satisfactory title under the Manitoba Act. The evidence, however, was satisfactory as to occupation by Logan subsequent to 1870. 30

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81. Was the application of the said Belch on the 15th August, 1870, referred to the Inspector of Surveys an officer in the Department, to be dealt with in the usual way and what was the result of the reference?

A. It was so referred, but the papers were returned from the Winnipeg office without any report from that officer.

82. Do you know the reason why a patent was not granted to Belch, under his said application, and was it because Logan through whom he, Belch, claimed was not in the opinion of the Government entitled to a patent?

Objected to by Mr. Gormully.

A. The papers do not disclose the reason why a patent was not granted to Belch, under his application, and there is no record other than the letter of the Surveyor-General of the 7th July, 1881, a draft copy of which is on file in the Department, and is marked Exhibit J, as to what was the opinion of the Government upon the merits of Belch's claim.

83. Would a declaration such as the one made by Fonseca, alleging that Logan was in possession in the year 1870, without stating that the possession was on and prior to the 15th July, 1870, be sufficient for the Government to act upon in issuing a patent to the said Logan or any person claiming through or under him, or would such a declaration so made by a party who was in a position to know the whole facts not be a good reason for the Government to refuse to issue a patent?

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A. If this question has reference to the issue of patents under the Manitoba Act, I answer that the declaration did not allege possession on and prior to the 15th July, 1870, and would not be sufficient evidence for the Government to issue a patent under the said Act, nor on the other hand would the declaration in question be a good reason for the Government to refuse to issue a patent to Logan, but a declaration so made by a party who was in a position to know the whole facts would be a good reason why the Government should refuse to issue a patent to any other claimant than Logan until Logan's claim had been fully investigated.

84. Does the said Belch in his said application claim also to be entitled to a patent for a portion of Lot G. through E. L. Barber?

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A. He does.

85. In the said declaration of the defendant Fonseca on the application of the said Belch, does he, Fonseca, allege that the said Barber was in possession of the portion of the said Lot G. prior to the 15th July, 1870: that the said Barber and those claiming under him had before the said 15th July and thereafter been continuously in possession

of the said portion of said Lot G. up to the time of the application of the said Belch; and in the said declaration of the defendant Fonseca does he make an express difference in time of commencement of possession between said Lots E. and F. under the said William Logan and the portion of Lot G. under the said Barber?

Objected to by Mr. Gormully.

A. Fonseca's affidavit of the 5th July, 1879, (Exhibit H.) alleges that Barber was in possession of part of Lot lettered G. prior to the 15th July, 1870; and the same has been since continually resided upon and occupied by him and those claiming under him. The affidavit appears originally to have contained the same statement in regard to Lots C. and F. and part of Lot G., but the words "prior to the 15th July" appear to have been interlineated in the third line of paragraph 3 of the said affidavit, although the said interlineation is not initialed in the usual way, and this interlineation does constitute an express difference in time of commencement of possession between the said Lots C. and F. under William Logan, and the portion of Lot G. under Barber. 10

86. Did said William Logan make an application for a patent for a portion of said Lot Number 35, including Lots C., D., E. and F., under the said Manitoba Act, and what was the date of his said application?

A. He did make such an application, the date of which is the 29th April, 1882. It was received in the Department on the 6th May, 1882.

87. Examine the record on the back of the said application of the said William Logan on the books of the Department, and say what was the date upon which the said application was received at Ottawa by the Government or by the Department to which it was directed. 20

A. It was received in the Department on the 6th May, 1882.

88. Look at copy of letter dated 15th September, 1883, addressed to Glass & Glass, Winnipeg, and say where the original letter may be found.

This question and copy of letter objected to by Mr. Gormully.

A. I do not know where the original letter is, but the draft is among the records of the Department of the Interior, on file 2172, M.A., which file is marked Exhibit K. There is also a press copy of the said letter which will be found on folio 494 of Letter Book No. 21 of the Department of the Interior for the year 1882. 30

89. Was the application of William Logan received at the Department after the 1st of May, 1882, and what land did that application cover. Did it cover the southern ten chains of said Lot No. 35?

A. The application was received after the 1st May, 1882, and was for a certain por-



tion of what is now known as "Lot No. 35 of the Dominion Government Survey or Lot No. 244 of the Hudson Bay Company's Survey of the Parish of St. John in the County of Selkirk and Province of Manitoba." In paragraph 3 of the application it is stated that the lands claimed by Logan may be better known and described as follows:

"Lots C, D, E and F as shown on a map or plan drawn by Duncan Sinclair, Esq., Dominion Lands Surveyor in the year 1870, and registered in the Registry Office in the County of Selkirk."

90. Was that too late for applications to be received upon which the found claims under the Manitoba Act.

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A. It was not. The Act 43 Victoria, Chapter 7, provided that claims under the Manitoba Act, should be barred if not made before the 1st day of May, 1882, or if made before the said day and not proved before the end of six months thereafter; but by the Act 47 Victoria, Chapter 26 the limitation of time for the final settlement of claims to lands under the Manitoba Act was extended to the 1st May, 1886.

91. What was the result of the application of William Logan. Was it found upon investigation to be an invalid claim and for that reason rejected by the Government and was this fact communicated in an official letter to Glass & Glass, of Winnipeg?

A. The letter addressed by Mr. John R. Hall, Acting Secretary of the Department of the Interior to Messrs. Glass & Glass, dated the 15th September, 1883, says that the claim of Logan to Lots C, D, E and F, was not considered to be a valid one, but a careful search through the records of the Department fails to establish any authority for this statement.

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92. Did William Logan claim the lot known as the Hupe lot or lot 24 of the system of parish lots on Point Douglas, and if so what was the result of his application

A. There is no direct application by William Logan, for this lot, but the record shows that Messrs. Scott, MacTavish and McCracken, Barristers of Ottawa, requested information in regard to Mr. Logan's claim thereto.

93. Do you know that the relator herein filed her bill in this honorable Court against the present defendants and also making the Informant herein a party defendant to set aside the patent to the land in the Information herein, and that the defendants herein and the Informant answered the said bill, and that issue was joined thereon and the hearing of the said cause came on in due course, the informant and the other parties being represented by Counsel, before the Honorable the Chief Justice of Manitoba, and that after a full and very lengthy examination of witnesses was dismissed out of the said Court with costs.

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Objected to by Mr. Gormully.

A. I am so informed.

94. For whose benefit is the suit being prosecuted

A. For the benefit of Eliza Mercer.

95. Do you know that the relator before obtaining the fiat of the Honorable the Attorney-General was ordered to give security for costs to the amount of five hundred dollars.

A. I am so informed.

96. Give the names of persons who have made applications to the Government for patents for lots C, D, E and F, or any parts of the same, and say what have been the results of such applications. 10

Objected to by Mr. Gormully.

A. William Logan.

T. S. Gray as the Assignee, of said Logan.

Belch, claiming through Logan.

Mercer, claiming through Logan.

The applications were in writing.

97. Was the said Belch, the only person who made application to the Government for a patent for any part of said lots C, D, E and F, prior to the month of December, 1879, and when did he make his said application, and was his application for a patent for the southern forty feet of lots C and F, no part of which said forty feet was or is within one hundred feet of the land claimed by the Relator as described in this Information. 20

Objection to by Mr. Gormully.

A. Belch was the only person who made application for a patent for any part of the said Lots C, D, E. and F. prior to the month of December, 1879. The application was made on behalf of Alexander James Belch by Messrs. Aikens and Monkman by letter dated 23rd July, 1879. The land applied for is referred to in Belch's application of the 7th July, 1879, as being "part of lots lettered C, F. and G., in the City of Winnipeg in the Province of Manitoba, such parts of lots being more particularly described in the paper writing hereunto annexed marked A." The same description is contained in the affidavit of Alexander Logan of the 8th July, 1879, accompanying the said application of Belch; but the paper writing marked A. is not to be found. The affidavit of Fonseca, however, of the 8th July, 1879, accompanying Belch's application, describes 30

the lots as being parts of lots letters C. F. and G. in the City of Winnipeg in the Province of Manitoba, such portions being the southerly forty feet of Lots C. and F., and 66 feet on Austin Street, by 70 feet in depth of Lot G, being that part not conveyed by Barber to Kew. As I understand it, the claim of the Relator Mercer is for the whole of Lots C., D., E. and F., and of course the forty feet claim by Belch is within one hundred feet of the claim of the Relator.

98. What was the result of the application of the said Belch?

A. Messrs. Archibald and Howell were written to by Mr. Lindsay Russell, then Surveyor-General, on the 7th July, 1881, asking them to furnish more complete evidence in support of the claim preferred by their client, and that if they could they should do so as speedily as possible. On the 15th July, 1881, Messrs. Hough, Archibald, Howell and Vivian addressed a letter to Mr. Russell, which reached the Department on the 20th of the same month, asking that the application of Mr. Belch should be returned to Mr. Whiteher, the Agent of Dominion Lands at Winnipeg, to enable them to have the papers inspected by Messrs. Aikens, Monkman & Culver, who drew up the papers, also asking for certified copies of the papers filed by Mr. Fonseca, and his application on which the patent to him was issued. Upon this request no action would appear to have been taken. 10

99. Was the land claimed by the said Belch the same land as is now occupied by one Thomas S. Gray spoken of in this Information?

A. I do not remember the exact description of the land applied for by Gray but I will look it up. 20

100. Since the month of December, 1879, did the said Logan make application for a patent for said Lots C., D., E. and F., and if so when did he make his application and how was it disposed of? (In answering this please look at letter from the Department to Glass & Glass on this subject).

Objected to by Mr. Gormully.

A. Logan made application for a patent for the said lots on the 29th April, 1882, which application was received in the Department of the Interior on the 6th May, 1882, but no disposition has so far been made of that application. In answering this question I have looked at the letter from the Department to Glass & Glass, dated 13th September, 1883, and hereinbefore alluded to. I repeat that I can discover in the records of the Department no authority for the statement that the claim of Logan to the said lots was not considered to be a valid one. 30

101. Has the said Eliza Mercer, the Relator herein, the said Gray or any other person made application to the Government or the Department for a right to purchase

or a free grant of any part of Lots C., D., E. and F. or any part thereof because of having been in possession of the same or making improvements thereon?

A. Mercer and Gray have both made applications to the Government for patents for these lands claiming through Logan. The other applications as already stated are from William Logan and from Belch claiming through Logan.

102. Has there ever been a case in the Department of the Interior where a party making out a clear title under the Manitoba Act has had a patent refused to him by the Government? If so give particulars of the case to which you refer.

A. There has been no such case to my knowledge.

103. Has there ever been a case where a party has made out a title under the 10 Manitoba Act—such a title as has been approved by the Deputy-Minister of Justice, the Deputy-Minister of the Interior, the Surveyor-General and the Right Honorable the Minister of the Interior, and yet in the face of this that the same land has been patented to another who claims to have gone into possession and made improvements since the 15th of July, 1870, simply because of such possession and improvements?

A. I do not know of such a case.

104. If a party made out such a title under the Manitoba Act as satisfied the Deputy-Minister of Justice, the Deputy-Minister of the Interior, the Surveyor-General and the Right Honorable the Minister of the Interior and that they all certified in writing to the same, would it be error, improvidence or fraud to issue a patent to such 20 a person?

A. It would in my opinion be an error or improvidence to issue a patent in such a case to any other person than a person establishing his claim under the Manitoba Act.

105. If a patent were granted under the circumstances mentioned in the last paragraph would it be set aside in order to give a patent of the same land to some other person because that other person claims to have gone into possession and made improvements since the 15th July, 1870?

A. That I presume is a question for the courts of law, but I do not think it likely that a patent would be set aside for such a purpose.

106. Do you know of your own knowledge that William Logan was not personally 30 in possession or was any one on his behalf in possession of the lands in question on and prior to the 15th day of July, 1870?

A. What I know personally of this case is what the evidence on the records of the Department discloses, but I have seen a copy of a judgment of the Chief Justice of



the Court of Queen's Bench in Manitoba in which he decides in effect that William Logan was not in possession on and prior to the 15th July, 1870.

107. Has William Logan ever told you that he was not in possession of the land in question on and prior to the 15th July, 1870 ?

A. He has not.

108. How many acres were there in said Lot 244, or what is now known as Lot 35. Was there over 600 acres ?

A. There were 667 acres in that lot.

109. Do you know by the records or otherwise the circumstances under which patents to lands have been granted out of Lot No. 35 of the Dominion Government Survey or 244 of the Hudson's Bay Company Survey in the Parish of St. John in the Province of Manitoba ?

A. Yes.

110. Do you know by the records or otherwise that the parish lot holders on Point Douglas originally claimed the whole of said lot, and that they appointed trustees who on behalf of said parish lot holders caused three surveys into town lots of said lot 244 to be made, and that the said trustees under the said surveys made sales of a good number of said lots ?

A. Yes.

111. Do you know by the records or otherwise that on the 10th May, 1877, or about that time the Government came to a formal determination not to grant to the said Point holders the whole of the said common, but to grant to them out of the said lot or common acre for acre to correspond with the area of their respective parish lot or lots on Point Douglas, and that in this way patents were granted to the respective parties ?

A. The Order-in-Council of the 10th May, 1877, Ex. L. and the memorandum of the Hon. David Mills, Ex. M., then Minister of the Interior, of the 7th of the same month, which forms part of the said Order-in-Council, of which Order-in-Council a copy has already been produced, explains fully the mode in which the claims of the Point holders were dealt with.

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112. Do you know by the records or otherwise that the late Neil McDonald occupied the most eastern part of the said Lot 244 or 35, and that the area of his holding was about 35 acres, and that by the said determination of the Government of the 10th May, 1877, his (Neil McDonald's) holding was created into a parish lot, and that he



too was to rate upon the said common or lot for acre for acre to correspond with his new parish lot, the same as the other parish lot holders on Point Douglas, provided as in said determination expressed that his said claim of acre for acre should not interfere with any rights thereafter established under the Manitoba Act?

A. Yes.

113. Do you know from the records or otherwise that soon after the said determination the Hon. John Sutherland, the defendant John C. Schultz, John McTavish, E. L. Barber and defendant W. G. Fonseca, made application to the Government for portions of the said lot under the Manitoba Act, and that pursuant to the said application grants were made to them of lands out of the said lot or common, and were there any valid claims under the Manitoba Act made to parts of the said common which were rejected by the Government?

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A. As I have already stated, the lands claimed by the several persons mentioned in this question were granted to them under the Order-in-Council of the 10th May, 1877. No valid claims to any part of the said Point Douglas Common under the Manitoba Act were rejected.

114. Do you know of your own knowledge or from the records that all the said common was increased in value because of the action of the said trustees in making the said surveys and laying out streets and selling lots thereon, and that the Government in consideration of this agreed to honor, recognize and make valid by patent all lots sold by the said trustees, and did the Government do so?

A. The Order-in-Council of the 10th May, 1877, under the authority of which the claims of the Point holders was disposed of, does not mention any increase of value of the lands composing the Common because of the action of the trustees in making surveys and laying out streets and selling lots, as one of the reasons why the Government recognized any claim on the part of the Point holders.

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115. Do you know or can you tell from the records if the Government recognized and made valid by patent all deeds made by those claiming under the Manitoba Act prior to the issue of the patents to them under the said Act?

A. Yes, the Government recognized and made valid by patent all deeds made by the trustees of the Point holders prior to the issue of the patents to the Point holders; but as I have already explained, the statement of fact contained in this question is inaccurate, inasmuch as the lands deeded by the trustees to persons other than those recognized as Point holders were not lands occupied at the time of the transfer, and were not therefore either claimed or granted under the Manitoba Act.

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116. Do you know or can you tell from the record if with the consent of all parties



or otherwise the Government granted to the Canadian Pacific Railway Company a very large tract of the said Common, to wit, about 200 acres of the same?

A. The Government of Canada granted about 200 acres of Point Douglas Common to the Canadian Pacific Railway Company for the purposes of station grounds as already stated, but without asking or receiving the consent of anybody, the land being Government property, and at the disposal of the Government for such purposes as they might think proper under the laws and regulation passed from time to time on that behalf.

117. Do you know or can you tell from the records if any portion of the said Lot or Common was ever granted to any other person in any other way or upon any other terms than what are enumerated in the former questions, and if so in what other way?

A. As already stated, grants have been made to the Winnipeg General Hospital of Lots 17, 18, 19 and 20 in Block 28, and to the Corporation of the City of Winnipeg for Quarantine Hospital purposes, of lots 1 to 12 (inclusive) and 24 to 34 (inclusive) in Block 78 on Point Douglas Common, the former in consideration of a payment of \$5,000 made to the Government, and the latter as a free gift.

118. Do you know or can you tell from the records that the defendant Fonseca at the time of the said determination, viz., on the 10th May, 1877, was in possession of a portion of the Common ten chains in extent from north to south immediately west of the said Neil McDonald's lot, and that the reservation about the Manitoba Act in the said determination when referring to the McDonald lot was made with express reference to the Fonseca holding, because he, Fonseca, claimed ten chains wide west of the McDonald lot out the full depth of said Common?

A. The records show that Fonseca was at the time mentioned in possession of a portion of the common ten chains in extent from north to south immediately west of the said Neil McDonald's lot, but the record does not show that the reservation referred to in the said determination was made with express reference to the Fonseca holding, nor do I know of my own knowledge that such was the case.

119. Do you know from the records or otherwise that the defendant Fonseca did make application under the Manitoba Act for a patent for the said ten chains, and if so, what was the determination upon his said claim and when was it come to?

A. The records show that Fonseca made an application for the said ten chains under the Manitoba Act and the determination upon his claim was arrived at by the Departmental order of the 3rd February, 1879, which sets forth the terms of the said determination.

120. Look at the copy of evidence of the late Col. Dennis and of Mr. Lang, taken at Ottawa on the 4th day of November, 1884, and say if they are correct in stating that the 25 acres were to be close adjoining to the defendant Fonseca's residence in the City of Winnipeg.

Mr. Gormully asks to have the evidence of Lang and Col. Dennis put in. Mr. Christie and Mr. McCracken do not put it in. Question therefore objected to by Mr. Gormully.

A. The evidence of Col. Dennis and Mr. Lang on this point is correct.

121. By the determination on the claim of the defendant Fonseca, is it alleged that he is to have an additional area, or an addition to the area he actually occupied so as to make 25 acres?

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Question objected to by Mr. Gormully as exhibit speaks for itself.

A. The memorandum of the 3rd February, 1879, Ex. G., states specifically that the area to be granted to Fonseca in addition to that which he actually occupied should be such as would make the whole 25 acres.

122. By the said determination in favour of the said defendant Fonseca upon his said application under the Manitoba Act, is there a provision in the following words or to the like effect: "And it will be advisable in the public interest to recognize the private surveys which have been registered in the Registry Office at Winnipeg, subdividing certain portions of the Common into building lots, and laying out streets thereon and furthermore that already action has been taken upon them by the Department in giving patents to individuals who bought building lots from the Trustees of the Point holders, therefore it would be well that the grant to Mr. Fonseca should be described to conform to the outline of certain streets to include certain blocks so laid out, and in doing this it may be necessary to depart slightly in defect or in excess from the area of 25 acres above specified."

20

A. There is such a provision in the memorandum of the 3rd February, 1879- (Exhibit G.).

123. Do the above references to surveys, streets and blocks refer to the surveys streets and blocks made and laid out by the said Trustees as therein stated, and according to the said determination in favour of the defendant Fonseca were the said lands of which he was to receive a patent to consist of Government lands being additions to the lands then actually occupied as a residence by him and out of the said survey?

30

A. Yes.

124. Do you know up to that time if any other surveys upon the said Common

excepting the said survey made by the said Trustees had been made. If so, name them, by whom made, and of what portion of the said Common.

A. There was not to my knowledge up to that time any other survey upon the said Common other than the Dominion Government River Lot survey.

125. How many acres were patented to the said Fonseca out of the said 25 acres determined to be granted to him?

A. Seventeen acres.

126. Look at the copy of the evidence given by the late Col. Dennis and of Mr. Burgess, Deputy-Minister, and of Mr. Lang, and say if they are right in saying that Mr. Fonseca, was not present or any person on his behalf when the selection in his favor was made of the said 17 acres. 10

Mr. Gormully asks to have the evidence of Col Dennis, Mr. Burgess, as well as Mr. Lang, put in. Mr. Christie and MacCracken object.

Question objected to by Mr. Gormully.

A. To the best of my knowledge and belief the evidence referred to is correct.

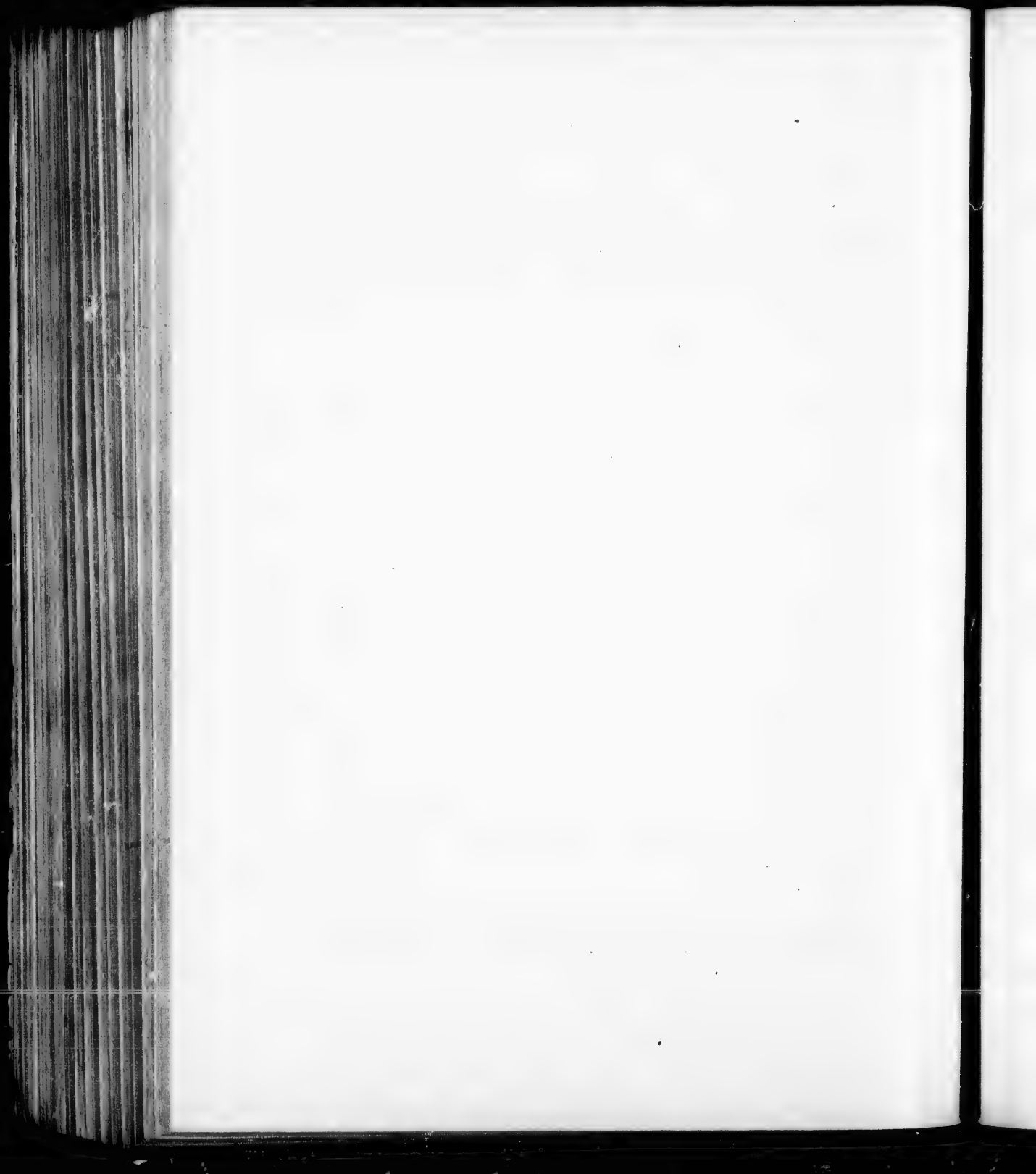
127. Look at said copy of the said evidence of the last named three gentlemen, and say if any occupant who merely took possession of part of the said common subsequent to the 15th day of July, 1870, would have such a claim as to prevent the Government including such lands in the patent to Fonseca, or would the including of such lands in his said patent by the Government be making a grant to him through improvidence, error or fraud. 20

A. In my opinion the granting of a patent to Fonseca, for lands other than his actual enclosures upon which lands there were any occupants or against which there was any claim of any sort whatever would, under the circumstances, have been through improvidence and error, unless the claim of the occupant or applicant as the case might be had previously been investigated and decided upon adversely by the Minister of the Interior.

128. Was it the duty of the Government pursuant to the determination in favor of the defendant Fonseca, of the said 3rd February, 1879, to carry it out in good faith and to grant him the lands in the locations and upon the conditions set out in the said determination. 30

A. It was.

129. Do you know of your own knowledge or otherwise that the said Logan, was and is a Brother-in-law of the defendant Fonseca, and that he (Fonseca) was always willing (prior to the grant of the said patent to him, Fonseca,) to allow the said



Logan or those claiming under him to make out title if they could to said lots C, D and E, and that this was the reason of the defendant Fonseca, for including the name of William Logan in the list sent the Government on the 3rd October, 1878.

A. To all of the inquiries included in this question I answer that I do not know of my own knowledge or otherwise.

130. Look at the letter and the statement of the defendant Fonseca to the late Col. Dennis, of the 3rd October, 1878, and to say if therein he uses these words: "As suggested by yourself during your recent visit to Winnipeg, when you had the best opportunity of seeing for yourself how matters stood, I send you the names of such persons as to the best of my knowledge are the owners at present. I have no disposition to deprive any one of their lots," and in the statement itself the following words:—"List of lots disposed of out of W. G. Fonseca's claim on the Point Douglas Common," and then follows the name of William Logan, for lots C, D and E, in Block 14, and say if in your opinion because of these remarks of Fonseca, it proved any title to exist in Logan or those claiming under him, or if because of these remarks of Fonseca, the Government was precluded from making a deed of these lots (if it owned them) to Fonseca, or was Fonseca, barred from receiving them from the Government as he afterwards did.

Objected to by Mr. Gormully, as letter speaks for itself.

A. In my opinion the remarks of Fonseca, alluded to do not prove any title to exist in Logan or those claiming under him, but in the face of these remarks I think the Government should have not have patented to Fonseca, the lots to which the remarks applied under the decision of the 3rd of February, 1879, (Exhibit G), nor do I think the Government would have granted the patents for these lots to Fonseca, except in error. As to whether or not Fonseca, was barred from receiving them from the Government as he afterwards did, I presume that to be a question of law, but I have no hesitation in saying that I think he should not have done so.

131. Has Logan or those claiming under him ever up to the present time shown any title whatever to lots C, D and E, named in the said statement of the 3rd October, 1878, or to C, D, E and F, now claimed by the present Information.

A. If I understand this question correctly, neither Logan, nor those claiming under him have shown any absolute title, but if the expression "any title whatever" is considered to include an equitable right to obtain a patent upon conditions to be named by the Minister of the Interior, I think the evidence produced by Logan, has established such a right.

132. Do you know that said lots D and E, claimed by the relator herein were wholly without buildings, fences, or other improvements and were in fact in a state of

nature until after December, 1879, when the patent was made to the defendant Fonseca.

A. I do not. The affidavit of John Eccles, of the 29th April, 1882, made in support of Logan's claim states distinctly that "some time in the autumn of 1869, William Logan, purchased building material and logs for the erection of a house and hauled the same upon the said premises, and afterwards in the Spring of 1870, erected a house upon the said property and resided thereon, and has continued to reside thereon, ever since in quiet and undisturbed possession." A similar statement is made in the affidavit made by one Henri Coutu, in the same connection on the 29th April, 1882; and Logan himself makes the statement in clause 6 of his affidavit of application also 10 dated 29th April, 1882.

133. If the defendant Fonseca, knew of his own personal knowledge that Logan or any other person on his behalf was not in possession of lots C, D and E, or any lands out of which they were surveyed on and prior to the 15th July, 1870, and that the said lands or lots or any part thereof had never been sold to the said Logan or those claiming under him by the said Trustess or any of the parties claiming under the Manitoba Act, would he have been justified in refusing the said lots and insisting upon the Government patenting the same to Logan or those claiming under him, and if he had done so, would it not have been a fraud upon the Government.

A. Under the circumstances set forth in this question I think Fonseca, would have 20 been justified in refusing a patent for the said lots, and only in case he insisted on having them patented to Logan or those claiming through Logan, as being entitled under the Manitoba Act, would there have been any fraud upon the Government.

134. If a patent had been granted to Logan or those claiming under him under the circumstances set out in the last question would the grant not have been made to them in fraud, error or improvidence?

A. I do not think so, if the patent were granted in consideration of long and peaceable possession subsequent to the time of the transfer.

135. Do you know that after the obtaining of the said patent the defendant Fonseca, caused the whole of said lots C, D, E and F, to be fenced, and that they have 30 been in his possession and the possession of his tenants ever since, and that they are now in his possession.

A. I do not.

136. What evidence is there now before the Government or the Department that the lots C, D, E and F, were granted to Fonseca through error, improvidence or fraud, these being the lands named in the present Information?



A. There is a certified copy of the evidence given by Col. Dennis before the Commission appointed by the Court of Queen's Bench of Manitoba to take evidence in the case of Mercer versus Fonseca, in which he states distinctly that it was his intention and the intention of the Minister of the Interior that the land to be granted to Mr. Fonseca in this case other than his actual enclosures should be land neither occupied nor claimed by any other person. There is also a record of the fact that other lots claimed by virtue of occupation subsequent to the transfer which were included in the patent to Mr. Fonseca were so included through error, and in these cases steps were taken by the Department to obtain from Mr. Fonseca, and the Department did obtain from him, a conveyance to the occupants of the lots so erroneously patented to him, 10 and he was granted other lots in lieu of the same, the lots so conveyed being Lot 2 in Block 12, lots 7 and the E. half of lot 8 in Block 11, the W. half of lot 4 in Block 12, lots 1 and 2 in Block B, and lot 4 in Block E.

137. What evidence is there at the present time before the Government that lots C., D. and E. being the lots named in Fonseca's letter of 3rd October, 1878, were afterwards placed in his patent of 5th December, 1879, through error, improvidence or fraud?

A. The statement made in answer to the next preceding question will apply to this question also.

138. Has the said Logan or any person claiming under him ever up to the present 20 time shown that he or they are entitled to the said lots or any one of them by virtue of the Manitoba Act, by purchase from the said trustees or in any other way whatever, and if so, give full explanation?

A. Neither Logan nor those claiming under him have shown that he or they are entitled to the lots now in question under the Manitoba Act, or by purchase from the trustees of the Point holders but as actual occupants of the lots and having built upon them since the date of the transfer, the evidence which they have filed would appear to give them an equitable claim to the first right of purchase.

139. Has the Department by an official letter to Glass & Glass of Winnipeg stated that the reason the claim of Logan to the lots in question was rejected was because 30 his claim was found to be an invalid one, and if so, please produce and read a copy of the letter so that the examiner may give the substance in your answer?

Objected to by Mr. Gormully.

A. The statement in the letter to Messrs. Glass & Glass referred to in this question, a copy of which I now read to the examiner, marked Ex. N., states that the claim of Logan to the said lots was not considered to be a valid one.

140. Do you know by the records or otherwise that in the case of the Relator Mercer plaintiff against Fonseca and the Attorney General defendants, that a decree has been made with costs in the Court of Queen's Bench of Manitoba by the Chief Justice of the said Court against the Relator and declaring thereby that Logan and those claiming under him were not in possession on the 15th July 1870, and that the said Logan and those claiming under him had no valid claim under the Manitoba Act?

Objected to by Mr. Gormully.

A. I have seen a certified copy of the said decree.

141. Is it true, as stated in the said evidence or deposition of the said Col. Dennis that at his instance Mr. Lang upon coming back from Winnipeg made lists of the 10 lands that should go to Schultz, Sutherland, Fonseca and others?

Objected to unless the evidence of these persons is put in.

A. I have no doubt of the truth of the statement although I am not able to lay my hands on the lists.

142. If it is true that the Relator now abandons any pretence that William Logan was in possession on and prior to the 15th July, 1870, or that Logan ever purchased the said property from the trustees or any other person, is it not the best of evidence that the patent to Fonseca was not issued through error, improvidence or fraud?

A. In my opinion it is not.

143. Look at the depositions taken in the case of Mercer the Relator plaintiff 20 against Fonseca and the Attorney-General defendants, and say if you Mr. Alexander McKinnon Burgess was right in saying then that "under the Manitoba Act we were bound to respect the rights of all parties in possession on and prior to the 15th July, 1870," and that "in December, 1879, the business of the Department had grown very largely?"

A. He was right in saying so.

144. If the late Col. Dennis said on the 4th December, 1884, in his said deposition taken in the case of Mercer v. Fonseca and the Attorney General that "the great care of the Department was not to grant land out of said Common to any persons but those shewing good titles under the Manitoba Act, or who were entitled to patents 30 because of sales made by the trustees to them or by parties entitled under the Manitoba Act, or in the case of acre for acre to the Point holders," was he in your judgment correct in that statement and if not why not?

Objected to by Mr. Gormully.

A. In my judgment Col. Dennis was right in saying that that was the great care of the Department.

145. What was the reason for the delay of six or seven years in making the patents to parties for their respective rights to lands on the said Common? Was it for the purpose of getting in all manner of outstanding claims, and were public notices given in the papers and by circular and all other possible information given at Winnipeg, in order to get in these claims and to avoid the chance of making title to any person not having valid claims in one or other of the forms above numerated?

A. The principal reason for the delay of six or seven years in issuing patents to the claimants of Point Douglas Common was that the Government refused absolutely 10 for a long time to recognize their claims. At the same time every reasonable effort was made to have claims of every description placed before the Department so that they might be investigated and decided upon.

146. Was all this time exhausted and trouble and expense gone to in order to avoid making patents to any person upon such a claim as is now set up in the Information at the instance of the Relator in this cause?

A. The time was principally exhausted because as stated in the answer to the next preceeding question the Government refused for a long period to recognize the claim of the Point holders. The proportion of trouble and expense gone to in order to avoid making patents to any person upon such a claim as is now set up in the Information at the instance of the Relator in this case was comparatively small; although the trouble and expense gone to for the purposes named in relation to lands claimed generally under the Manitoba Act was very great. 20

147. After the 3rd February, 1879, when the 25 acres were agreed to be granted to the defendant Fonseca out of certain lands adjoining his residence and within certain blocks in the said surveys, and it was found that the said Lots C., D., E. and F. belonged to the Government free from any of the foresaid claims and came within the area designated, and that they were required to make up the allotment to Fonseca, had the Government power to withhold them from the patent to be made to him and to patent them to another because the other took possession and made improvements since the 15th July, 1870? 30

A. The Government had absolute power to withhold these lands from the grant to Fonseca and to make such other disposition of them as might be thought proper.

148. When the Lots C., D., E. and F. were granted to Fonseca under the Manitoba Act, was the grant to him not merely confirmatory of his former title, and could any possession or improvements taken or made after the said 15th July, 1870, intervene to prevent him rightly getting that confirmatory title?

A. Lots C, D, E. and F. were granted to Fonseca under the Order-in-Council of the 10th May, 1877, and the memorandum of the 3rd February, 1879, (Exhibit G.) and was not confirmatory of a former title, but as stated in the memorandum of the 3rd February, 1879, as an act of grace, and therefore any possession or improvements taken or made after the 15th July, 1870, would properly have intervened to prevent him from obtaining a patent.

149. Look at Farmer and Livingstone 5 Supreme Court Reports, and say if the Department has followed the practice therein laid out?

A. I have not a copy of the Supreme Court Reports at hand, and am therefore unable to look at the case of *Farmer v. Livingstone* referred to in this question. 10

150. Were you present on the 4th November, 1884, and following days, or part of the time when Messrs. Dennis, Burgess and Lang were examined before a Commission at Ottawa in the suit of *Mercer v. Fonseca* and the Attorney-General of Canada; and do you know at these examinations Mr. Hogg appeared and represented the Attorney-General of Canada, and that the issue in this case was that William Logan and those claiming under him (the Relator being one) were entitled under the Manitoba Act to the lands in question in this Information?

That part of question as to issue objected to by Mr. Gormully.

A. I was myself examined on the occasion in question, and was present during a part of the time when Mr. Lang was examined, but not during any portion of the time when Col. Dennis was examined. My recollection is that Mr. Hogg appeared representing the Attorney-General, and I recollect that the issue in this case was that William Logan and those claiming under him were entitled under the Manitoba Act to the lands in question in this Information. 20

151. Did the defendant Fonseca or any other person on his behalf in any way mislead the Government on the subject of granting the lands to him?

A. In my opinion the Government were misled on the subject of granting these lands to Mr. Fonseca, but whether the person who misled the Government was acting on behalf of Mr. Fonseca does not appear.

152. Is it shown in any way up to the present moment that Fonseca is not justly entitled to all the seventeen acres included in his patent of the 5th December, 1879? Fonseca was to have received 25 acres, and if he has really only received 17, is he not even now justly entitled to an additional eight acres? 30

A. Fonseca was justly entitled to an area of 25 acres, but he was not justly entitled to obtain patent for lands outside his actual enclosures which were occupied or claimed by anybody else.



153. Is there any sufficient evidence on record to show that even if the patent to Fonseca were set aside that the Relator Mercer or any other person would be entitled to patent for the lands in question in this cause?

A. The evidence before the Department at the present time is insufficient, in my opinion, to show that if the patent to Fonseca were set aside Logan or those claiming under him would be entitled to the lots claimed upon such terms and conditions as the Minister of the Interior might see fit to impose.

154. Is this proceeding on the face of it (in view of all that has been done about the said Common) not a mere speculation on the part of the Relator and others to, if possible, get the Fonseca patent set aside, and then through influence or otherwise to get a patent of these lands to themselves upon a new basis, and one that has never been attempted before in regard to any of these lands? 10

A. There is no evidence before the Department which would justify an answer to this question in the affirmative.

155. If this Information succeeds do you know that there are over two hundred squatters who have gone into possession and made improvements since the 15th July, 1870, on the said Common and who stand ready on similar Informations to assert their claims on similar grounds?

A. I decline to answer this question, because I am not authorized by the Minister of the Interior to communicate the policy of the Government in regard to the question asked. 20

156. Do you know that exclusive of the said lands granted to the C. P. R. there are about 450 acres of the said Common divided into several thousand small lots in the City of Winnipeg, upon which are hundreds of squatters who have taken possession since the 15th July, 1870, and made more or less improvements who might fairly claim to be considered on the same grounds as are set out in the present Information?

A. The answer to the next preceding question is my answer to this.

157. If Logan had made out his claim to the lots in question under the Manitoba Act before the Department or in the suit of Mercer v. Fonseca, would he or those claiming under him have been entitled to a patent for the said lots, or could any other person claiming because of possession or improvements since the 15th July, 1870, intervene and get a preference to the said Logan or those claiming under him? 30

A. If Logan had made out his claim to the lots in question under the Manitoba Act, he, or those claiming under him, would have been entitled to a patent for the said lots.

158. Do you know of your own knowledge or from the records that notwithstanding the letter and statement of Fonseca of the 3rd October, 1878, the officers of the Department were fully aware from other information that Logan and those claiming under him had no valid claim under the Manitoba Act or in any other way in which the lands of the said Common had been treated, and that to have granted the said lots to Logan or those claiming under him would have been a fraud upon the rightful claimants to the lands of the said Common?

A. I am not aware, either from my own knowledge or from the records of the Department that such is the case.

159. When the selection of the said 17 acres was made for Fonseca, had the Department before it the Registrar's abstract from the Registry office of the City of Winnipeg, upon which the Lots C, D, E and F. appeared, and other like information of a documentary kind, together with other needful evidence which was brought before the Deputy-Minister of the Interior, the Surveyor-General, and the Deputy-Minister of Justice, to establish that Logan or those claiming under him had no title under the Manitoba Act or in any other way whereby the Department would be justified in making a patent to him or them as against the rightful claimants to the said Common or the respective parts thereof?

A. At the time the patent was issued to Fonseca copies of the Registrar's Abstracts were in the possession of the Department, and an examination shows that the Lots C, D, E and F. appeared therein; but there is nothing to show that this abstract or other like information of a documentary kind, or any information of any kind, regarding the claim of Logan, was brought before the Deputy-Minister of the Interior, the Surveyor-General and the Deputy-Minister of Justice at that time.

July 13th, 1886.

Present:—Mr. Gormully, for the Attorney-General, Mr. MacTavish, for Defendant Fonseca and Mr. J. Christie, for Defendant Schultz.

Cross-Examination of Mr. A. M. Burgess, continued by Mr. MacTavish.

In answer to question 36, I say in explanation that I am not prepared to say whether if Spence, was the owner or not of the lots therein referred to. I was not asked by said question whether Spence, had a good claim or not, but whether he was the owner.

I make a similar explanation to my answers to questions 39, 42 and 45.



Cross-Examination of Mr. A. M. Burgess, by Mr. Christie.

The Government is in my opinion in possession of sufficient evidence to entitle Eliza Mercer, to a patent to the lands in question herein on paying for the land such price as may be fixed therefor by the Minister of the Interior.

The department has not decided upon that, they have come to no conclusion and can come to none until the question in this suit is decided. If the patent in this suit is set aside the Government have decided to issue a patent to the said lands to Eliza Mercer. This decision appears in a memorandum made by me and approved of by Sir David MacPherson, the Minister of the Interior, dated May 16th, 1885.

Re-Examined by Mr. Gormully.

10

The land granted to Fonseca, under the authority of the Departmental order of the 3rd February, 1879, Exhibit G, was not granted under the Manitoba Act, but was granted as appears in said Exhibit G.

Objected to by Mr. Christie.

Mr. Fonseca, would have been entitled to his actual enclosures only under the Manitoba Act, which enclosures would not include the lands in question in this suit.

The lands referred to in questions 14 to 21 in Mr. MacTavish's cross-examination, were granted to the persons therein named, under the Order-in-Council of 10th May, 1877, and not under the Manitoba Act. (Objected to.) The patent for lands granted under the Manitoba Act, are and have always been issued on a special form of patent 20 a copy of which is now produced marked Exhibit O.

In explanation of answer to cross-question 50, what I mean is that letter was on the files and might have been referred to. I do not as a fact know whether or not it was at that time referred to.

The A. Russell, referred to in cross-question 68, was a chief clerk in the Department of the Interior.

The statement referred to in the letter of John R. Hall, mentioned in cross-question 91, that the claim of Logan, to lots C, D, E and F, was not considered to be a valid one, was not made by my authority and is incorrect.

(Signed.)

A. M. BURGESS. 30

OBJECTIONS.

At the hearing the following objections were taken to the questions and answers respectively in the depositions of A. M. Burgess, and were duly noted by the presiding Judge.

Counsel for the Defendants objected to the question in Burgess' examination-in-chief on p. 169, as to the existence of a practice in the Department of the Interior with reference to the disposition of Crown lands of which persons are in possession; also, to the question on p. 170, as to whether a patent would have been ordered to be issued to Fonseca if the Minister had had present to his mind the declarations, letters, etc., of Fonseca; also, to the witness stating, on p. 170, that the usual course was for the Inspector of Surveys to make a report upon claims.

Questions 83, 127, 130, 131, 132, 134, 136, 152, 153, and the answers thereto, were objected to on behalf of Defendant Schultz.

Answer to question 139 was objected to on behalf of Informant and ruled out. 10

Questions 147, 149 and 157 were objected to on behalf of Defendant Schultz.

Question 148 was objected to on behalf of both Defendants.

Counsel for Fonseca objected to the witness giving his opinions, on p. 209, upon cross-examination by Counsel for Defendant Schultz.

DEPOSITIONS

OF

J. S. DENNIS, TAKEN IN SUIT OF MERCER VS. FONSECA,

AND PUT IN BY THE INFORMANT.

Deposition of John Stoughton Dennis taken in this case in pursuance of the order made herein dated the 27th day of October 1883 under my appointment, and the adjournment thereof, taken this 4th day of November, 1884.

W. M. MATHESON, Special Examiner.

Mr. Gormully appears for the plaintiff.

10

Mr. Christie appears for the defendants.

Mr. Hogg appears for the Attorney-General of Canada.

J. Stoughton Dennis called and sworn and examined by Mr. Gormully :—

Q. You were for a long time in the service of the Dominion Government ?

A. I WAS.

Q. You were Surveyor-General for a number of years ?

A. I was Surveyor-General for seven years.

Q. Up to what date ?

A. Up to November, 1878.

Q. And then from that time forward ?

20

A. To January, 1881 I was Deputy Minister of the Interior.

Q. Do you recollect a claim that was made by the defendant Fonseca to a part of lot 35 of the Dominion Government survey ?

A. I remember he did make a claim to a large portion of it.

Q. In his own right I mean, as distinct from what they call the Point Douglas Common property ?

A. Yes.

Q. I will just read you the statement in the bill, I think that is correct—his claim was ten chains fronted, two miles back ?

A. To the best of my recollection it was.

Q. You recollect that he put in a petition ?

A. Yes, I remember.

Q. You remember the petition referred to in the 6th paragraph of the bill in this case ?

A. Yes.

10

Q. I suppose that is a copy of the petition dated the 26th July, 1877 now shown you, claiming a portion of lot 35 (official number 9076) ? (See Exhibit D.)

A. Yes.

Q. What did the Government do in connection with that petition ?

A. I went into the claim of Mr. Fonseca, and reported that in my opinion he was not entitled to that land. At the same time he had an equitable claim to certain consideration in the way of part of the estate, and I recommended that he should have a certain portion of the land.

Q. As I understand it you went up to Winnipeg and saw him there, did you not ? 20

A. I saw him there.

Q. And you discussed the matter with him there ?

A. I did.

Q. Did you go over the land with him ?

A. I went over part of it.

Q. Do you recollect from looking at the letter of the 3rd of October, 1878, written to you while you were there, that you asked him to write you that letter as he states there (Exhibit B.) ? (Same as Exhibit E.)

A. I think it is probable that I asked him to send me a full statement of every body that had a claim to that piece of land, and I think, probably, this letter was the result. No doubt I asked Mr. Fonseca for this in order to put myself in a position to 30

know really what Crown lands we had available there of the portion that Mr. Fonseca claimed.

Q. The schedule to that letter is number 15,310, is it not?

A. Yes.

Q. And it shows what?

A. It shows that lots C, D, and E, out of W. G. Fonseca's claim on the Point Douglas Common had been disposed of to William Logan.

Q. On the 3rd of February, 1879 did you concur in a report or a memorandum to the Minister dealing with Fonseca's claim, and if so is exhibit D. a copy of the memorandum? (Ex. D is the same as Ex. G.)

10

A. Yes, I was a party to that report.

Q. You recommended that Fonseca's claim to this part of lot 35 should be settled?

A. Should be commuted by a grant of 25 acres.

Q. As provided by this memorandum of the 3rd of February, 1879, number 12,472? Exhibit D. (Same as Ex. G.)

A. Yes.

Q. In this memorandum there is no definite portion of the lot given?

A. No.

Q. That had to be done subsequently?

A. Before doing that it was necessary that we should look into it and see what 20 portions we would except.

Q. And it was put in that form on that account?

A. It was put into that form to show that under all the circumstances we considered Mr. Fonseca, had a good claim, but not a claim to the whole of the land that he asks for.

Q. The 160 acres that he asks for?

A. No. And we proposed to commute his claim by giving him 25 acres of such land as was available at the easterly end of the block, that is the end next where he lived?

Q. When was this selection made ?

A. That is more than I can tell you. The whole of Point Douglas Common, was a question that gave us a great deal of trouble. It was up repeatedly and repeatedly. Dr. Schultz, came about it one time, and Mr. Sutherland another time, and Mr. Fonseca another time, and they worried us all the time ; and every time any one came the question would be taken up, and perhaps a step made in advance, and then it would lapse again until there was another agitation about it. The exact time that we took up Fonseca's claim is more than I can tell you, but to the best of my recollection I sent Mr. Lang, up to Manitoba to investigate disputed claims generally along the river, and, if I am not very much mistaken one part of his duty was also to look into the Point Douglas Common matter, and to put himself into a position to make a report to the Department as to what lands really we had available there ; what lands had been disposed of, and the position of all those different claims. It strikes me that after he came back was the time he went into the matter, at my instance, and made a list of the lots that should go to Fonseca, those that should go to Sutherland, those that should go to Dr. Schultz, and so on. All those different parties whose rights were to be commuted.

Q. And in pursuance of his selection you directed the patents to issue ?

A. I think so.

Q. Did you know at the time that you directed that patent to issue that you were patenting away the lots C, D and E ?

A. Well, I certainly was in ignorance before authorizing the issue of the patent that that patent was to include any lands that the Government had not the right to grant, because that was the very thing we were trying to steer clear of.

Q. Did you remember when you approved of the selection of lots that Mr. Lang had made, that Mr. Fonseca had admitted in his letter that C, D and E, were Logan's lots ?

A. Certainly not.

Q. You did not remember that at the time ?

A. Certainly not. The details of the making up of the schedule of the lands that were to go to the different parties I left to the clerks, especially to Mr. Lang, as he was charged with that duty.

Q. If it had been brought under your notice at that time that this list of lots for patent to Fonseca, included C, D and E, would you have authorized the patent to issue ?



A. Certainly not. Not for a moment, because it would have been manifestly wrong.

Q. So that you did not as a matter of fact intend, and the Government did not intend—

Objected to by Mr. Christie.

Q. It was not the intention of the Government to give Mr. Fonseca, lands that other persons had a claim to ?

A. Certainly not, and lands that he admitted belonged to other people.

Q. And you certainly would not have disposed of Logan's claim without investigation ?

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A. Most certainly not. It is all new to me. I did not know that this point would have come up at all ; I thought it was all straight. I did not know there was any difficulty about it. This is the first I have heard of any lands being included improperly in Fonseca's patent. I am predicating my idea of the impropriety on Fonseca's letter.

Q. I will read you this letter :—

The *Times* Printing Office, Main Street,
Winnipeg, opposite City Hall, Winnipeg, May 22nd, 1879.

" Mr. Bannatyne told me the other day that in a conversation with you he plainly stated that had I not been ahead of him in surveys, staking, and improvements, he would have persisted in demanding a patent for that portion of 35 I now occupy, and that you agreed with him that I was entitled to my patent. I also understood you when reference was made to the subject during our drive. Of course I do not wish to interfere with those who have settled on certain portions of my claim, but expect to have that made good."

In that letter he refers to the persons who were named in the letter of the 3rd of October, 1878.

A. There were certain portions of the lands that he admitted, and that he pointed out to me when we were on the ground together, that had been taken up and settled upon and disposed of out of this 160 acres that he claimed ; but the 25 acres was intended to be independant of that. He was to have 25 acres, and those portions were to be deducted, and those people who owned those pieces were to be protected in their possession.

Q. That is, those persons named in the letter of October, 1878 ?

A. Yes.

Q. So that, as a matter of fact, the Department has never decided against the Mercer claim ?

A. I am not aware what decisions may have been made since I left the Department.

Q. But before the issue of the patents ?

A. No, it was not prejudiced in any way.

Q. It was intended to be prejudiced ?

A. No, no good claim was intended to be prejudiced.

Q. I believe that the practice of the Department has always been uniform, has it not, that a patent would not be issued covering the property in possession of another person without due investigation by the Department, and notice to that person ?

A. It is a very delicate thing to do. The practice has always been laid down not to issue a patent as long as there was anything in dispute.

Q. So that had you known that Logan claimed this land simply, the patent would not have issued until you had disposed of Logan's claim ?

A. No, it would not.

Q. Not knowingly ?

A. It would not.

Q. You are aware that some other lots were included in Fonseca's patent which ought not to have included ?

A. That I cannot say.

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Objected to by Mr. Christie.

Q. In dealing with the claims of persons under the Manitoba Act, persons in possession, was it the practice of the Department to recognize all persons in possession prior to the 15th of July, 1870 ?

A. The possession required to be *bona fide*. It was not a mere alleged occupancy, but they were to prove actual, *bona fide* possession.

Q. Commencing prior to July, 1870 ?

A. Yes.

Q. And if they proved that, the Crown recognized their title ?

A. Yes.

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Q. Without any reference whatever to any supposed consent on the part of the Hudson Bay Company ?

A. Yes.

Q. That is to say, a title depending on possession only, and commencing anterior to the 15th of July, 1870, and having the qualities required by the Act, would be recognized by the Crown, and the patent would issue to the person who made out such a title?

A. Yes. There were instances where the Hudson Bay Company protested, and claimed a right to the land patented or about to be patented, but their contention was overruled. It was held that they had no more right than any other party in the country, and that the Act gave the land to the man in actual possession on the 15th 10 July, 1870.

Q. So that if Logan had made out before the Department a possession such as the Act required, commencing before the 15th July, 1870, he would have been entitled to this land ?

A. He would.

Q. And he would have got these lots ?

A. He would.

Q. Could you tell us how it was that the patent that was issued to Fonseca, covered these lands ? Could you state it just generally ?

A. The patent to Fonseca, no doubt, was issued by my authority and included lots that 20 were reported upon in Fonseca's favor by the official sent by me from the Department ; and if there were lands included that should not have been included, it is clear to me it was a clerical error on the part of those officials ; but certainly I was entirely ignorant of anything of the kind, and learn now for the first time that the patent covered lands that it should not have included

Q. If those letters of the 3rd October, 1878 and the 20th August, 1879, had been laid before you at the time that the list of lots selected was laid before you in order to get your authority to issue that patent, would you have issued the patent ?

A. On comparison; and finding that certain of those lots that should have been excepted there were included in the patent, I certainly should not have authorized its 30 issue.

Q. Of the patent ?

A. Certainly not. It was the very thing we were trying to steer clear of.

Q. So that the patent that has been issued was issued by mistake ?

A. It was issued in error.

By Mr. Christie.

Q. That is, so far as you know ?

A. Of course : I am not a Court.

By Mr. Gormully.

Q. Is this correct ; that the general practice of the Department at the time with respect to patents for properties in and around Winnipeg precluded the granting of any lots to the plaintiff which were then in the occupation of or claimed by other persons, without notice to such persons, and until after a careful investigation of the claims of such other persons ?

A. That is true.

Q. Do you recollect if Logan's claim was up ?

A. I cannot remember that. I do not remember it specially.

Q. The patent issued in December, 1879, and this was in August, 1879, that he wrote to you ?

A. Yes.

Q. You cannot say ?

A. I cannot recollect exactly now, there were so many claims of that kind. You see, after I was appointed Deputy-Minister the most of these details were arranged. It was the duty of Mr. Lang, in connection with the Surveyor-General, to classify and look into all these different claims, and it was the duty of the Surveyor-General to make his report to me or to the Minister, so that I would take their reports. I would not go into matters of detail myself, and if Logan's case came up after I was Deputy-Minister it would be dealt with as far as the details are concerned in the way I mentioned—by Mr. Lang and the Surveyor-General, and I would be merely referred to to approve or disapprove of the conclusions they arrived at.

By Mr. Christie.

Q. And the presumption would be that if the patent was issued for this property, and Mr. Logan had claimed it, that the claim had been disposed of by the Department ?

A. That would be the presumption. I recollect Logan being at the Department two or three times on business, but I think it was with the Surveyor-General. I only saw him to speak to him, and that was all.

By Mr. Gormully.

Q. Looking at that letter file which is called the William Logan file, can you say now whether in December, 1879, any decision had been come to on the Logan claim, or whether any adjudication had been made on the Logan claim?

A. To the best of my recollection there was not. I have no recollection of it. I think if there had been I would have remembered it. (Filed as Exhibit E.) (Same as Exhibit "F.")

Q. And so far as the record shows?

A. The record would show that on the 29th of April, 1882, he had not had his claim adjudicated upon, because he asked to have it investigated, 10

By Mr. Christie.

Q. But that would not presume that he had not had it before the Department previous to that?

A. He says he encloses his application and affidavits, which is presumptive evidence that that was the beginning of his claim. I think that if he had put in his claim while I was Deputy-Minister I would have known it. I would have remembered it.

By Mr. Gormully.

Q. So that you think now, from your recollection, that the time the Fonseca patent was issued the claim had not been adjudicated upon?

A. I do. I assume that this application and the affidavit there are for Lots C., D. 20 and E.

Q. While you were Deputy-Minister did Fonseca repeatedly request the Government, or repeatedly request you to give him other lots in lieu of the Logan lots?

A. Not specifically in lieu of the Logan lots, but in lieu of lands it was assumed we could not grant him.

Q. But this was after the issue of the patent. Did he ask you to give him other land in lieu of the Logan land?

A. Not that I remember of.

Q. I see that at page 8 of Fonseca's examination he says this:—"I was quite willing to give up these lands Lots D. and E. to Logan or anyone else if the Government would give me an equivalent. I told the Government this."

A. No, I do not remember anything about it.

Q. You do not remember his telling you that ?

A. No, it never came to my knowledge, as I before remarked. I learn now for the first time there were lands improperly included in his patent.

Q. Then he says : " Did you not request them to do so ?—I cannot remember that : it may be very likely I did. Q. What was the answer they made to your request ?—They requested me to convey lands to other parties, and left Logan out. Q. Did they not intimate to you if you conveyed those lands to Logan you would not get an equivalent for others?—I expect that is what they said. I expect that is likely what they said. Mr. Lang of the Department is the person with whom I had more intercourse than anyone else." Would Mr. Lang have authority to make any statement such as that on behalf of the Government ? 10

A. Mr. Lang's authority should have been confined, and was confined strictly to ascertaining what lots we were in a position to grant. He had no discretionary power whatever ; his duty was to find out matters of fact.

Q. I am reading now from Mr. Lang's examination :—" Fonseca never asked me to select any particular lots. Col. Dennis only gave me instructions as to selecting." Then he goes on to say : " Q. Was Col. Dennis personally acquainted with the holdings on the Point Douglas Commons ?—Yes, Col. Dennis told me he was. I think I got instructions to draw the reference for patents from Col. Dennis. * * * I had no written instructions. I was also directed to select an area of land as near to the land actually in occupation of Fonseca as possible, and not including any land sold by Fonseca or the Point Douglas trustees to make up the quantity to be granted to Fonseca." 20

A. Precisely so.

Q. But the question I asked him was whether he was told to disregard the rights of occupants, and he said that your instructions to him were confined to regarding the rights of persons who had bought from Fonseca or the Point Douglas trustees, and not to regard the rights of occupants ?

A. It is possible the question did not come up as to whether there were any claims of that kind ; but certainly if I had been aware that there were any claims of that kind we should have looked into them to see that we were not granting to Fonseca claims which were good under the Manitoba Act. 30

Q. Do you recollect, as a matter of fact, whether you confined the instructions in that way ?

A. No, I do not ; but I am perfectly clear in one thing, and that is, that I never gave him instructions to disregard any claims that might be preferred, excepting they

had been of the character of which you speak; because claims were cropping up constantly under the Manitoba Act, arising from simple possession, and it would have been improper for me to do so, and I might have been giving away a good claim and I would not do it. It was a condition of being constantly on the watch and on guard in granting land in these river belts, not to compromise interests in granting land that we had no right to grant.

By Mr. Christie.

Q. The Government took every pains to give notice to all claimants to come forward with their claims?

A. Yes, we tried to do so.

Q. And one of the objects in sending Mr. Lang up there, was to see that all parties had notice?

A. It was.

Q. And you are aware that circulars to that effect were sent round?

A. Yes, I am aware of it.

Q. And you are aware too, that it was publicly known what Mr. Lang's object was in going to Manitoba at the time?

A. I cannot say that it was publicly known; but I advised parties up there who had claims against the Government that Mr. Lang was sent up there, and that he was told with full authority to investigate and report upon them.

Objected to by Mr. Gormully.

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Q. So that if there were claims there by Mr. Logan, it would have been the duty of Mr. Lang to examine into them?

Objected to by Mr. Gormully.

A. It would appear that Mr. Lang ought to have been aware at that time that there was a claim on the part of Mr. Logan; because, if I remember aright that was before Mr. Lang's visit (the 23rd Oct., 1878), and it ought to be presumed perhaps that he remembered there was a claim of that kind. But there were so many claims that he might have been forgiven if he did not remember it.

Q. But it would have been his duty to have investigated it if he had remembered it?

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A. Yes.

Q. And if it was his duty to do so, there is a strong probability that he did investigate it?

A. That I cannot say, because, I think, if he had investigated it it would have appeared in a report somewhere. He made a report to me in detail. He made a report to me in detail after he came back, of all the lands available.

Q. Amongst the lands available these lands that were patented were mentioned were they not, as available?

A. That I cannot tell you. He only reported upon disputed claims.

Q. I understood you to say that he was reporting on all lands available to the Government?

A. That was in parishes up the river; in this particular place I do not think he was particularly instructed to do so, because Point Douglas Common was held by so many different parties, and I think we understood we had all the claims before us at the time with regard to that. 10

Q. So that with regard to Point Douglas Common it was not part of Mr. Lang's duty to report upon the lands that were available for sale?

A. Not part of his visit to Manitoba. It was his duty in the office before making out the list of lots for patent.

Q. But it was a part of his duty on his visit to Manitoba to procure information upon all the claims that were being made respecting the Point Douglas Common?

A. No, not so much that as it was the claims of parties in the older parishes—claims to disputed farms. 20

Q. But had he not something to do with regard to Point Douglas Common?

A. I am not sure about that. I cannot recollect that I gave him any specific instructions about Point Douglas Common, because the thing was so constantly before us by one person and another, and we had so many applications, and so many papers on file about it, that I imagined we had all the claims before us in one form or another.

Q. Was it not the practice of the Department to determine whether a claim was a bona fide claim for possession or not?

A. Yes, certainly if we were not satisfied we asked for more evidence and then submitted the evidence to the Department of Justice.

Q. And if they had not evidence sufficient to show the actual possession, they ruled them out, and the Government sold the land or retained it? 30

A. Yes.

Q. So that from time to time it was a part of your duty, and a part of the duty of the Department to weigh and consider the different claims that were made by parties?

A. I should think it was.

Q. And to come to a determination and judgment upon them?

A. Yes; and Mr. Lash and I have spent until two or three o'clock in the morning for weeks together on it. Before the patent was issued the Department of Justice had to approve the fiat.

Q. You do not know whether this patent was issued improvidently or in error?

A. No.

Q. And from what was read by Mr. Gormully you cannot say with any degree of 10 confidence it was issued in error?

A. I have not read the patent myself, but I assume that it covers those Lots C, D, and E, and manifestly, as the thing appears to me now, the patent would be incorrect. I am assuming that what Mr. Fonseca states there is correct, that C, D, and E. were three lots that were actually in the possession of another party at the time that he made his application and sent in that schedule, and if so they should not have been included in his patent.

Q. Although there may have been a determination by the Department that he was not in actual occupation?

A. If there had been, I think I would have recollected it.

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Q. But it is only upon the question of recollection, like that, that you go?

A. That is all; I have no recollection of any case of Mr. Logan's being adjudicated upon while I was in the Department.

Q. Do you remember Mr. Logan ever making an application?

A. I remember his being in the office in the Department two or three times; but I merely saw him to speak to him, and he did not open his business to me at all; but I think he had business with Mr. Lang and the Surveyor-General.

Q. Do you know if it was about this property?

A. I do not. I know that he said he had some claim, and that was general, that is all.

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Q. Do you know if it was with respect to Point Douglas Common?

A. That is more than I can tell you.



Q. There is nothing in the letter of the 3rd of October, 1878, which states that Logan was in possession of C, D. and E.

A. He puts them down as being amongst the lots that were disposed of.

Q. But you will observe it is a list of lots disposed of out of Fonseca's claim on the Point Douglas Common?

A. I say that if he had disposed of them out of his land he had no right to have them included in his patent.

Q. Does that refer to being disposed of by the Government?

A. No, I assume them to be disposed of by the original trustees of Point Douglas Common, and we acknowledged their sales and confirmed them wherever we were 10 satisfied about them:

Q. If it turns out that C, D. and E. had never been disposed of by the trustee of Point Douglas Common, but that Logan was claiming under possession himself?

A. Then of course it could be a question of claim under the Manitoba Act.

Q. But, as far as regards this letter, it does not show that Logan was in actual session of the property?

A. No, it does not; but it shows that he had a claim to these particular lots, which Fonseca acknowledged.

Q. It does not appear on that document that he acknowledged it. He only brings i before your notice that it had been disposed of to some person. What was the object of 20 his giving that list?

A. The object was in order that we might give him other lands in lieu of those lands which he said had been previously disposed of. That was his object, and that was what we wanted to do, and that is what I supposed we did do, because we were giving him a certain quantity of land?

Q. If your object was to give him land in lieu of the lands mentioned in this schedule, and the Government actually gave him the lands mentioned in that schedule, how can you say that the patent was issued improvidently?

A. Because it was issued under a misapprehension on the part of the Government. They would not have included land in his patent that they had any right to 30 assume belonged to any person else.

Q. But it does not appear in that letter that the land belonged to any person else?

A. Well, I think it is a *prima facie* case where Fonseca puts down this list as having

been disposed of previously out of his claim, that they were Logan's lands, and that he had no claim to them himself; otherwise what would he put it down for? If Logan had no claim Fonseca would have been a fool to put them down, because I know where the lands are, and they are amongst the most valuable.

Q. Then in case this patent was issued in that way—instead of lands being issued in lieu of C, D. and E., they were C, D. and E. that were issued?

A. Certainly, Fonseca's course should have been this: when he found that we had included these lots of Mr. Logan's in his patent, knowing that he had given us notice that those lands belonged to Logan, he should have come to us and said "this patent is wrong in so far as this, that you have included lots C, D and E, in the patent." "I do not claim these lands; I have given you notice that I do not claim them, but I claim the same quantity of land of equal value in lieu of them, and I am ready to surrender these to the Crown, and you should be willing to give me an equivalent in land." And if I had been Minister of the Interior that is what I would have done.

Q. I am instructed that this was the position of the affair that C, D and E, had never been granted by the Trustees to this man Logan, but that Logan was claiming under a bogus state of possession?

A. That raises a point I know nothing about. Logan's claim was not investigated or adjudicated upon while I was in charge.

Q. If Logan had no claim by virtue of a transfer from the Trustees of Point Douglas Common, then this letter would have been written under a misapprehension?

A. Yes, without Fonseca took the view that it being disposed of it was covered by the Manitoba Act.

Q. But the letter itself does not show how?

A. No.

Q. And you understand it as having been disposed of by the Trustees?

A. Yes, or by Fonseca himself.

By Mr. Gormully.

Q. It would appear that in December, 1879, Logan had made a claim in the Department for these lands?

A. Yes.

Q. And that claim had not been investigated or disposed of on the 5th of December 1879, so far as the record shows?

A. Yes, that is my opinion.

Q. If Logan had an uninvestigated claim on the 5th of December, 1879, and if you had known it, you would not have authorized the issue of the patent for the lots which he claimed, C, D and E?

A. No.

Q. If there was any disputed claim, the Government did not issue a patent until the dispute had ended?

A. No.

(Signed,) A. S. DENNIS

At the hearing, Counsel for the Defendants took the following objections to the questions in the depositions of J. S. Dennis, which were duly noted by the presiding Judge :

1. To the question on p. 214, "If it had been brought under your notice at that time that this list of lots for patent to Fonseca, included C, D and E, would you have authorized the patent to issue?"

2. To the question on p. 218, "Is this correct; that the general practice of the Department at the time with respect to patents for properties in and around Winnipeg precluded the granting of any lots to the plaintiff which were then in the occupation of or claimed by other persons, without notice to such persons, and until after a careful investigation of the claims of such other persons?"

3. To the question on p. 215, "It was not the intention of the Government to give Mr. Fonseca lands that other persons had a claim to?"

EXAMINATION

DE BENE ESSE OF

DEFENDANT SCHULTZ,

PUT IN BY THE DEFENDANTS.

The examination *de bene esse* herein on oath of the defendant Schultz pursuant to the order dated _____ day of _____, 1886, before Andrew Lemon, a Special Examiner to this Court.

Present Mr. Ewart and Mr. G. W. Baker for the Informant and Relator, Mr. Glass for defendant Fonseca, and Mr. J. S. Tupper for defendant Schultz.

The said Schultz being sworn saith :—

To Mr. David Glass.

Q. You are one of the Senators of the Dominion of Canada ?

A. Yes.

Q. When were you appointed ?

A. In 1882.

10

Q. How long have you resided in the Town or City of Winnipeg ?

A. 26 years.

Q. In what part of the Town ?

A. Principally in the north end, north of where the C. P. R. track is now.

Q. Do you know lot 244 of the Hudson Bay survey or 35 of the Dominion survey ?

A. Yes.

Q. In passing from your residence to the business part of the City would you pass over or near to the lot 35 referred to ?

A. Yes, about half a mile over it.

20

Q. Were you familiar with the improvements upon it on the 15th July, 1870 ?

A. Yes I was.

Q. Have you been especially so since that, the 15th July, 1870 ?

A. Yes, and up to 15th July, 1880.

Q. Can you extend the time up to 1882 ?

Objected to.

A. Not every house up to that time.

Q. Give the names of Parish lot holders on Point Douglas independent of the lot in question as far as you can recollect.

Objected to on the ground that ownership of lots cannot be proved in this way. 10

A. Subject to objection.

Commencing on the north there was myself, next Henry Johnson, next the Hon. John Sutherland, E. L. Barber, Wm. G. Fonseca, John Bruce, E. L. Barber and John Schultz jointly, His Grace the Archbishop, Thomas Spence I think, Madame Bouvette, Neil McDonald, and part of McDonald's in possession of Fonseca, although there were two or three more River lots.

Q. How many lots had Fonseca altogether, Parish lots ?

Objected to on same ground.

A. I know he had two on the north side and one on the south side. I think he had more but I can't say without seeing the plan. 20

Q. Can you tell the whole of the area of the whole of the Parish lots on Point Douglas Common independent of the lot in question ?

Objected to.

A. I cannot recollect. It is fixed in the Order-in-Council.

Q. Can you say the area of the lot 35 ?

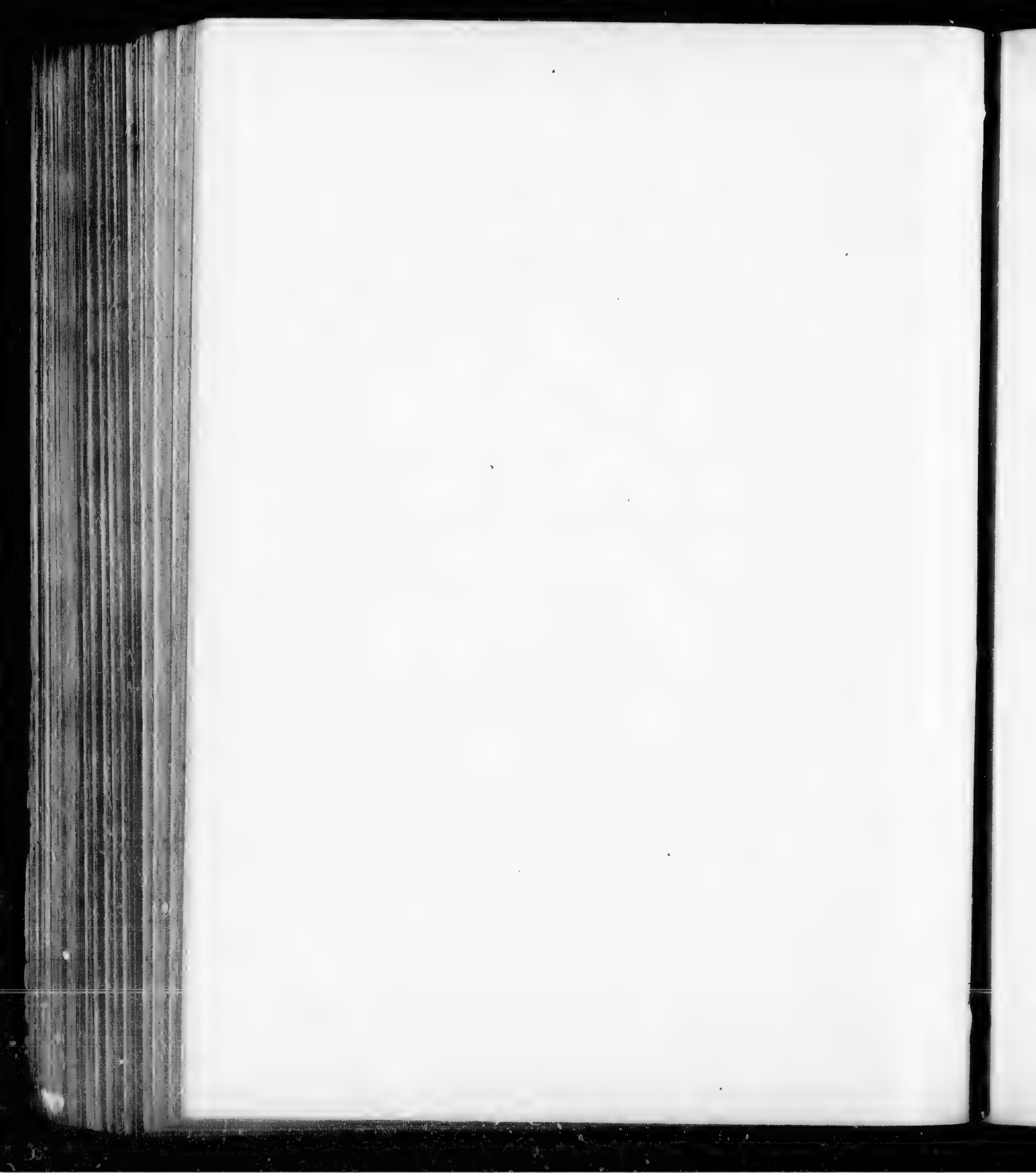
A. It is over 600 acres.

Q. What position did the Parish lot holders take in regard to lot 35 ?

A. Joint ownership.

Q. What did they do in pursuance of that claim amongst themselves ?

A. They held meetings, made resolutions and appointed Trustees. 30



Q. Can you say who the Trustees were ?

Objected to, if the appointment is in writing it must be produced.

A. Hon. John Sutherland, Hon. Walter Bown and W. G. Fonseca.

Q. Were you one of the Trustees ?

A. No.

Mr. Glass offers what purports to be a copy of a certified copy of Duncan Sinclair's plan certified by the Registrar Kennedy, of the Registry office at Winnipeg, as appears by the copy of the certificate on the plan produced Exhibit 1.

Objected to.

Q. Can you say as to the making of that survey by Sinclair for the Point Douglas 10 holders ?

Objected to.

A. (Subject to objection.) Yes it was made by Sinclair for the holders.

Q. You speak of the original survey by Sinclair.

Objected to.

A. Yes. I say he was employed to make the survey and plan, of which I believe this plan produced is a copy ?

Q. Can you tell where the original plan was kept between the making of it and the registration of it ?

A. Yes, in Mr. Barber's store, where the Point holders used to meet.

20

Q. Where was the store situated ?

A. On lot "C."

Q. On lot "C?"

A. I don't mean lot "C." I mean Barber's store was immediately to the south of the lots in question in this suit, and on Main Street.

Mr. Ewart asks that it should be noted that between the answering of the last question and the one immediately preceding it the witness referred to Exhibit No. 1 and some explanation was made to him by Mr. Glass.

Mr. Glass desires the Examiner to state that the above is the statement of Mr. Ewart and that he, Mr. Glass, made no explanation whatever to the witness on the 30

plan, and that Dr. Schultz stated he did not give his answer from the plan but independent of it.

I say for myself I saw Mr. Glass stand up with the plan in his hand, but as he stood between me and the witness I did not see what was done, if anything, or hear any explanation, if any, that he made to the witness as regards the plan.

A. L., Examiner.

Q. In giving your answer to the last question were you influenced in any way but from your own knowledge?

A. Oh! no.

Q. Were you assisted by any one in giving that answer?

10

A. No.

Q. Do you remember any other survey, if so, by whom was it?

A. The same parties had a survey made by J. J. Johnston, I think.

Q. Who were in actual possession of lot 35 on 15th July, 1870.

A. There was John Schultz, John McTavish, E. L. Barber, W. G. Fonseca and Hon. J. Sutherland.

Q. What part did Fonseca occupy?

A. The south eastern end or corner; he also occupied on the King's Highway, west of Main Street.

Q. How many chains from north to south on the eastern part of the lot?

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A. Not less than ten chains.

Q. Where was his then residence.

A. On the S. E. corner of lot 35. It is still in the same place.

Q. Where were his barns, barn-yards and stables, if he had any?

A. To the north of his house.

Q. How long prior to 15th July, 1870, had he been in occupation of these, his house and barns.

A. Not less than 7 years.

Q. When you say his house and barns what do you refer to?

A. I mean his dwelling and storehouse and what was called "byres" in those days, for keeping horses and animals.

Q. In regard to the ten chains how do you speak of the inclosure upon it?

A. It was inclosed from north to south.

Q. Where was the land situated that Fonseca had got from Neil McDonald as before mentioned by you?

A. Immediately on the river side of the ten chains I speak of.

Q. Who was in possession of that piece of land?

A. Fonseca was.

10

Q. Prior to what time would he be in possession of that?

A. I can't say from recollection, but I think about seven years prior to the 15th July, 1870.

Q. About how many acres would there be in the piece he got from Neil McDonald?

A. I could not say, it was a large field.

Q. What land lay immediately to the east of the field mentioned?

A. The property of Neil McDonald.

Q. Can you say as to this field was it inclosed?

A. Yes.

Q. Who occupied it?

A. Fonseca occupied it.

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Q. In connection with what?

A. His own place. There was a fence dividing this field from Fonseca's ten chains, and Fonseca occupied the field to grow grain upon.

Q. Where was the building you speak of situated on Main Street, relatively to the ten chains of Fonseca?

A. It would be equal distance from north to south on the ten chains. It would be within the area of the ten chains.



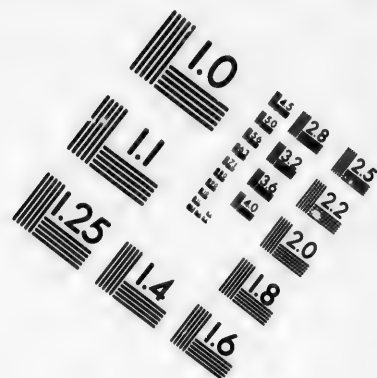
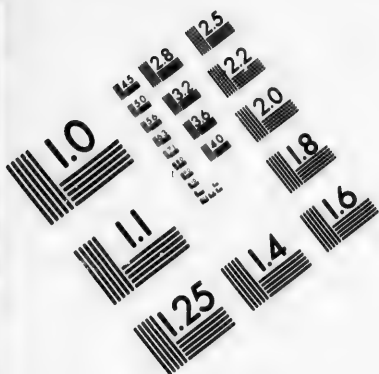
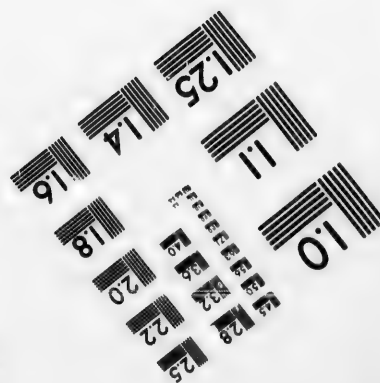
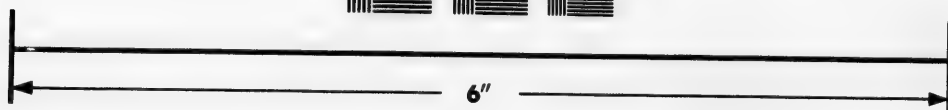
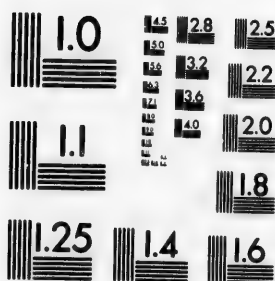


IMAGE EVALUATION TEST TARGET (MT-3)



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Q. And how far west of this land you described as occupied by Fonseca ?

A. I could not say. I should say it would be a quarter of a mile west of his house.

Q. When did you first see the building on Main Street ?

A. He commenced it just before the rebellion.

Q. When would that be ?

A. In fall of 1869.

Adjourned at 12.30 till 10 o'clock to-morrow.

Nov. 4th, Examination resumed at 10 a. m., same counsel present.

Q. Do you know lots 17, 18, 19 and 20 in block 28 granted by Dominion Govern- 10
ment for General Hospital ; consideration, \$5,000 ?

Objected to.

A. Yes.

Q. Can you say whether they were granted because of the Grantees having been in
possession and made improvements since 15th July, 1870 ?

Objected to. Mr. Glass dispensing with stating grounds of objection. Any ground
of objection being left open.

This is to apply to all subsequent objections. Mr Tupper also consenting to this.

A. No. The lots were bought by the Government from Hon. R. Bown and myself,
and sold by the Government to either the General Hospital or the City of Winnipeg. 20
I don't know which.

Q. Do you know Lot 12 and Lots 24 to 34 in Block 78 being the land granted by
the Government to the City of Winnipeg for a quarantine hospital ?

Objected to.

A. I don't know this particular land, but I know a piece was so granted.

Q. Do you know whether the piece granted for quarantine hospital was because of
the Grantees having been in possession and made improvements since 15th July, 1870 ?

Objected to.

A. It was not.

Q. Do you know the large tract of land in the City of Winnipeg granted by the Government to the Canadian Pacific Railway Co?

A. Yes.

Q. Can you say whether that tract was granted because of their having been in possession and made improvements since 15th July, 1870?

Objected to.

A. It was not.

Q. Out of what parish lots were the three several parcels referred to in the last three questions taken? The lot is designated in different ways—sometimes Lot 35 and sometimes 244.

10

Objected to.

A. I am not sure of the Hudson Bay Co. number, but I know the Dominion number to be 35.

Q. Can you tell who had charge at Ottawa for the trustees in bringing the matter to the attention of the Government?

A. Hon. John Sutherland and John Schultz.

Q. After the Order-in-Council of 10th May, 1877, can you say as to the notoriety of the decision then come to?

A. Yes, it was well known and I think published in the newspapers here.

Q. Can you say as to whether you ever had any conversation with Lindsay Russell, then Surveyor-General, after 5th December, 1879, as to granting Lots C. D. E. & F. to defendant Fonseca?

Objected to.

A. Yes, I had.

Q. With what Government Department at Ottawa was he connected?

A. The Department of the Interior.

Q. What Department has charge of such lands as those in question?

A. The Department of the Interior.

Q. What office did he (Russell) hold at that time?

A. That of Surveyor-General.

Q. What conversation had you with him after the 5th December, 1879, about Lots C. D. E. & F. ?

Objected to.

A. Mr. Russell expressed regret at there being any trouble in the matter of Fonseca's patent, and said that at the time the patent was granted it was the only course the Department could then take. I understood him to allude to Lots C. D. E. & F. of that patent—that is my answer.

Q. Did he give you any reason why this was the only course he could take ?

Objected to.

A. He did.

10

Q. What reason did he give ?

Objected to.

A. He said these lots had to be included in the patent, because examination had been made into the titles of them and that they were undoubtedly the property of the Government and that Fonseca must accept them as being part of the ten chains in width of the grant the Government had made him.

Q. During July, August and September last past, who was the Minister of the Interior ?

A. Hon. Thomas White.

Q. You were residing at Winnipeg at and prior to 15th July, 1870, and up to the 20 time of the Act Creating Manitoba into a Province ?

A. Yes.

Q. How long did you continue a member of the House of Commons ?

A. From the first Dominion Election for Manitoba, some time in the year 1872, until October, 1882. A few months after 1882, I was appointed a Senator and have continued to be ever since.

Q. During these years while you were in the House of Commons, what constituency did you represent ?

A. Lisgar, which is in the vicinity of Winnipeg.

Q. For your constituents had you any duties to perform as to lands ?

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A. My constituency being a country one my constituents constantly appealed to me to adjust their differences and forward their claims for patents.

Q. And therefore can you say as to the practice at the Department of the Interior?

A. Yes.

Q. You mentioned yesterday names of persons who were Parish lot holders on Point Douglas, tell me if William Logan, ever was and if so, how recognized as a Parish lot holder on Point Douglas?

Objected to.

A. He never was to my knowledge.

Q. If Fonseca had persisted in assisting Logan, to get a patent to C, D, E and F when he Fonseca, knew that Logan was not in possession of the lot on 15th July, 1870, in what light would you have regarded the conduct of Fonseca?

10

Objected to.

A. His conduct would have been regarded by me and the other holders as an act of treachery, neither Fonseca's influence nor any other influence could have gotten a patent for these for Logan, because the Deputy-Minister Col. Dennis, told me in presence of the Surveyor-General, that Logan's claim had been thoroughly examined and that he had no right whatever to the lots. (Conversation objected to.)

Q. Between 3rd February, 1870 and 5th December, 1879, what took place between you and Fonseca?

A. I made a purchase from him Fonseca, of an undivided half of the lands which we believed would be patented to him.

20

Q. What was the consideration?

Objected to.

A. \$1,250.

Q. Will you say as to the *bona fides* of that transaction?

A. The transaction was an ordinary matter of business.

Q. Was there any other consideration besides the money named?

A. No.

Q. What would be the value of any one of the lots at that time?

A. They were irregular lots so I would have to give it by the foot and would say about a dollar a foot on Main Street.

30

Q. About what would they be worth at the present time on Main Street?

A. About \$190 a foot.

Q. Can you say as to the ten chains applied for by Fonseca on 26th July, 1877. Can you say whether they include these lots C, D, E and F.

A. They included these lots.

Q. Can you say what the practice of the Department was when any number of chains was fixed on as an actual residence and occupation by the applicant under the Manitoba Act as to how far the number of chains extended backwards or to the rear end of the lot.

A. It extended back two miles, the width of the chains he proved.

Q. Have you heard any Minister, or Deputy Minister, of the Interior make any allegation on that point?

10

Objected to.

A. All ministers have regarded it as a rule of the Department.

Q. If any lots were included in Fonseca's patent which had theretofore been conveyed to other parties by the Trustees upon seeing this what would have been his duty?

Objected to.

A. It would have been his duty to have accepted from the Government other lots in lieu of those.

Q. Why would this have been his duty?

Objected to.

20

A. Because the Government only recognized two things, claims made under the Manitoba Act and deeds made by the Trustees.

Q. Was there not another made of granting lots out of 35?

Objected to.

A. Yes, an allotment of acre for acre to the persons holding Parish lots.

Q. About 1867 do you remember a survey of what is known as Dominion lot 35?

A. Yes, by H. L. Sabine, D. L. S.

Q. Can you say about what proportion of that survey was borne by Fonseca?

A. I should think over half of the survey was borne by Fonseca instead of his proportion, ten chains, the others having failed to pay their proportion.

30

To Mr. Ewart.

Q. When did you first know William Logan ?

A. For 20 years past.

Q. Did he ever reside on any part of lot 35 spoken of ?

A. Yes.

Q. When did he first reside on any portion of that lot ?

A. It must have been in 1872. His house was commenced in winter of 1870 and 1871. The logs were hauled there.

Q. What buildings had he on any part of 35 in 1871 ?

A. A log building. I don't think any other at that time.

10

Q. Was that building upon a portion of the property in question ?

A. I think it was.

Q. How long did he continue to live in that log building ?

A. Several years.

Q. Can you say down to what year ?

A. No, I cannot.

Q. Where did he remove to when he left that log building ?

A. I don't know. I think he left on a trading expedition to the plains as a clerk for Barber.

Q. Did Logan erect any other buildings after the first log building on any part of 20 the land in question ?

A. I think he did.

Q. What were they and when erected ?

A. He added a frame kitchen probably the following year after building the log building.

Q. What other building ?

A. That is all I know of.

Q. Were you aware Logan sold a portion of the property in question to Mercer ?

A. I heard so.

Q. About what year was that ?

A. I could not say. It would be impossible for me to tell you.

Q. Did Mercer erect any building on any part of the property ?

A. Yes, he did.

Q. What were they and when ?

A. A frame dwelling house, but about what date I could not say.

Q. Would it be previous to 1879 ?

A. Yes, I think it was.

10

Q. Did Mercer occupy it after its completion ?

A. He did.

Q. And did he continue to occupy until down after the issue of the patent ?

A. I can't tell.

Q. Do you know whether Logan sold any other portion of the property in question to any person ?

Objected to by Mr. Glass.

A. I heard he sold a portion to one Gray.

Q. Did Gray put up any building ?

A. If he did it was at the back of the rear of the lot—but none on Main street. 20

Q. Did you hear of the sale by Logan to Gray previous to '79 ?

A. If sold to Gray it must be previous to '79.

Q. And you heard of it previous to '79 ?

A. Yes, but I do not distinctly recollect.

Q. Are you aware of any other sales that Logan made of portions of the property in question ?

A. Yes.



Q. To whom were such sales made ?

A. To one William Thomas.

Q. Did Thomas erect any building on the property previous to '79 ?

A. I don't think so.

Q. Were you aware from time to time of the persons who were in actual occupation of the property in question down to the date of the patent ?

A. No, I was not

Q. Were you aware at the time of the issue of the patent that there were several persons residing on the property in question who did not claim title through Fonseca, but who did claim through Logan ?

10

A. Yes.

Q. I suppose you were always aware Logan did not claim title through Fonseca ?

A. Yes.

Q. I believe that previous to " the transfer " lot 35 was used by the " Point Holders," as a place from which they in common cut hay ?

A. Yes they did.

Q. And it was by reason of that right which they had that they claimed a patent from the Government ?

A. Not by any means.

Q. Did any Point Holder claim to own any part of lot 35 for himself to the exclusion of any other of the Point Holders previous to " the transfer " ?

A. Their claim was absolute in common to the whole of 35.

The Question is repeated.

A. My answer is yes.

Q. Was any such claim admitted by any other of the Point Holders ?

A. Yes.

Q. Prior to the transfer did Fonseca, ever claim to own 10 chains of lot 35, to the exclusion of the other Point Holders ?

A. Yes.

Q. Was that claim admitted by the other Point Holders ?

A. Yes, so far as I know.

Q. When did he first make any such claim ?

A. It must have been 7 or 8 years before the transfer.

Q. Notwithstanding did the other Point Holders cut their hay on the 10 chains claimed by Fonseca ?

A. Yes, with Fonseca's consent.

Q. Notwithstanding that claim of Fonseca's did he join with all the Point Holders in claiming a patent from the Government of lot 35, for their joint benefit ?

A. The patent was claimed from the Dominion Government to be granted to the 10 Trustees to be subdivided by them in accordance with their knowledge of the proper proportions to be allotted to each.

Q. What was the result of that application ?

A. It stood in that form until just before the allotment of acre for acre by Order-in-Council when the Trustees themselves recommended to the Government to subdivide lot 35 and to grant the acre for acre allotment of the Point Douglas Holders of such portion of lot 35, as had not been patented under the Manitoba Act or patented to those who held the Trustees' deeds. The Government accepted this proposition and the distribution of the parts as subdivided into lots out of Dominion lot 35, was made in that way.

20

Q. Did the Government decline to recognize the title of the Point Holders to lot 35, under the Manitoba Act ?

Objected to by Mr. Glass.

A. They declined in as much as they did not grant it to us and we accepted what we did get under protest.

Q. Then did the Point Holders accept patents for portions of lot 35, obtaining upon lot 35 the corresponding number of acres they held as Point Holders subject to the protest you speak of ?

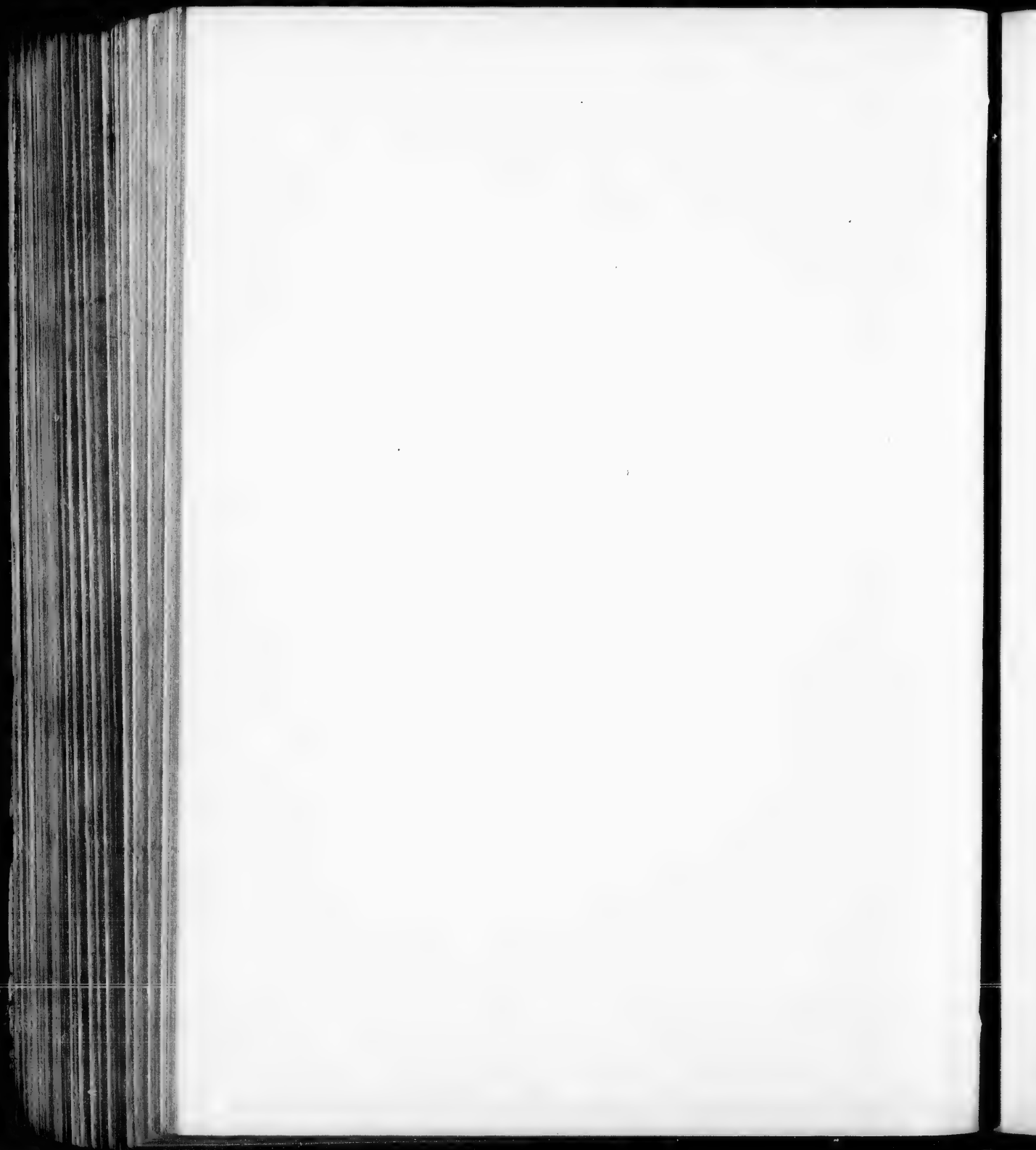
A. So far as I know they did.

Q. Mr. Fonseca was one of those who accepted ?

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A. Yes, I believe he was.

Adjourned at 1 o'clock till 10 of 5th November.



5th November, 1886. Examination at 10 a.m. resumed.

Same parties present.

Q. At the time that you purchased from Fonseca what was the position of the matter in the Department so far as relates to the grant to him of any part of Lot 35?

A. I know the Department had decided to grant to Fonseca seventeen acres.

Q. Did I understand you to say that Sinclair's plan was made for the Point Holders jointly?

A. Yes. I think so.

Q. And I believe the trustees made disposition of various lots according to that plan for the benefit of all?

10

A. Yes.

Q. Did Barber purchase from the trustees that part where his store was erected on east side Main street?

A. He did not. He obtained permission from the Point Holders to erect the building.

Q. Was it understood he was to have any particular quantity of land in connection with his building?

A. Not being a trustee I cannot say.

Q. Then you were not consulted yourself personally about Barber building here?

A. Yes.

20

Q. Were you consulted as to the quantity of land he was to have?

A. No.

Q. Are you aware that Lang who used to occupy a position in the Department of the Interior was discovered to have been engaged in irregularities in connection with the issue of patents from that Department?

Objected to by Mr. Glass.

A. I am not aware.

Q. Are you aware that he left the Department and went to the States?

Objected to by Mr. Glass.

A. I am aware by report that he obtained sick leave and went to the States.

30

Q. Are you aware that he has not returned from the States ?

Objected to by Mr. Glass.

A. I am not aware.

Q. Did you ever hear of his having returned from the States ?

Objected to by Mr. Glass.

A. Yes.

Q. Did you ever hear of his having gone back to the United States shortly after ?

Objected to.

A. I did not. I heard he was in St. John's, New Brunswick.

Q. Did you ever hear of his returning to his position in the Department ?

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Objected to by Glass and Tupper.

A. I do not know.

Question repeated.

A. I never heard.

Q. Would you probably be aware if he had returned ?

Objected to by Mr. Glass.

A. I would not. I have been sick for 4 years and do not know.

Q. Did you ever hear of any irregularities in the Department with which Lang was connected ?

Objected to by Mr. Glass.

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A. I have heard rumors outside of the Department.

Q. What was the nature of the irregularities that you heard about ?

Mr. Glass objects emphatically to this line of examination.

A. That as the Solicitors of Fonseca and Mercer objected to my giving hear-say evidence I decline to answer that question.

Here the witness wishes to say something in explanation of his examination by Mr. Ewart. "Mr. Ewart asked me as to Mr. Gray's purchase.

I wish to say that Gray purchased on 2nd August, 1881. There were no buildings on the part he bought until afterwards.



Also I wish to say Mrs. Mercer bought in January, 1882.

I also wish to say that no buildings were erected on lot C, D, E and F at the time Fonseca's 17 acre patent was registered, except those built by William Logan. In these respects I correct my evidence of yesterday "

To Mr. Glass.

Q. When you spoke of Mrs. Mercer did you refer to the Relator in this cause?

A. I did.

Q. You know the lots that are included in this cause that are in controversy, C, D, E and F.

A. Yes, I know those.

10

Q. On which of these were the buildings of Logan referred to?

A. On the one nearest to Barber on Main Street.

Q. Do you know as to Barber getting a deed from the Trustees after he got their consent, that is of lot "B."

Objected to.

A. I heard that he did, but am not sure.

Q. Was William Logan a well educated man?

A. Yes, decidedly.

Q. Can you tell anything in particular on that subject?

A. He was, I think, educated at St. John's College, and was book-keeper and clerk 20 to E. L. Barber, and was considered by the people of this country to have a superior education.

Q. Do you know where Lindsay Russell is at the present time?

Objected to by Ewart as not arising out of his cross examination.

A. I do not know where he is.

Q. Since the last Equity Sittings here have you endeavored to ascertain where Lindsay Russell is. Have you given your Solicitors directions on the subject?

A. I have.

Q. And what has been the result ?

A. I can't find out where he is.

To Mr. Glass.

Q. When you speak of Mrs. Mercer purchasing part of the lands in 1882 do you refer to the Relator in this cause ?

A. I do

(Signed)

JOHN SCHULTZ.

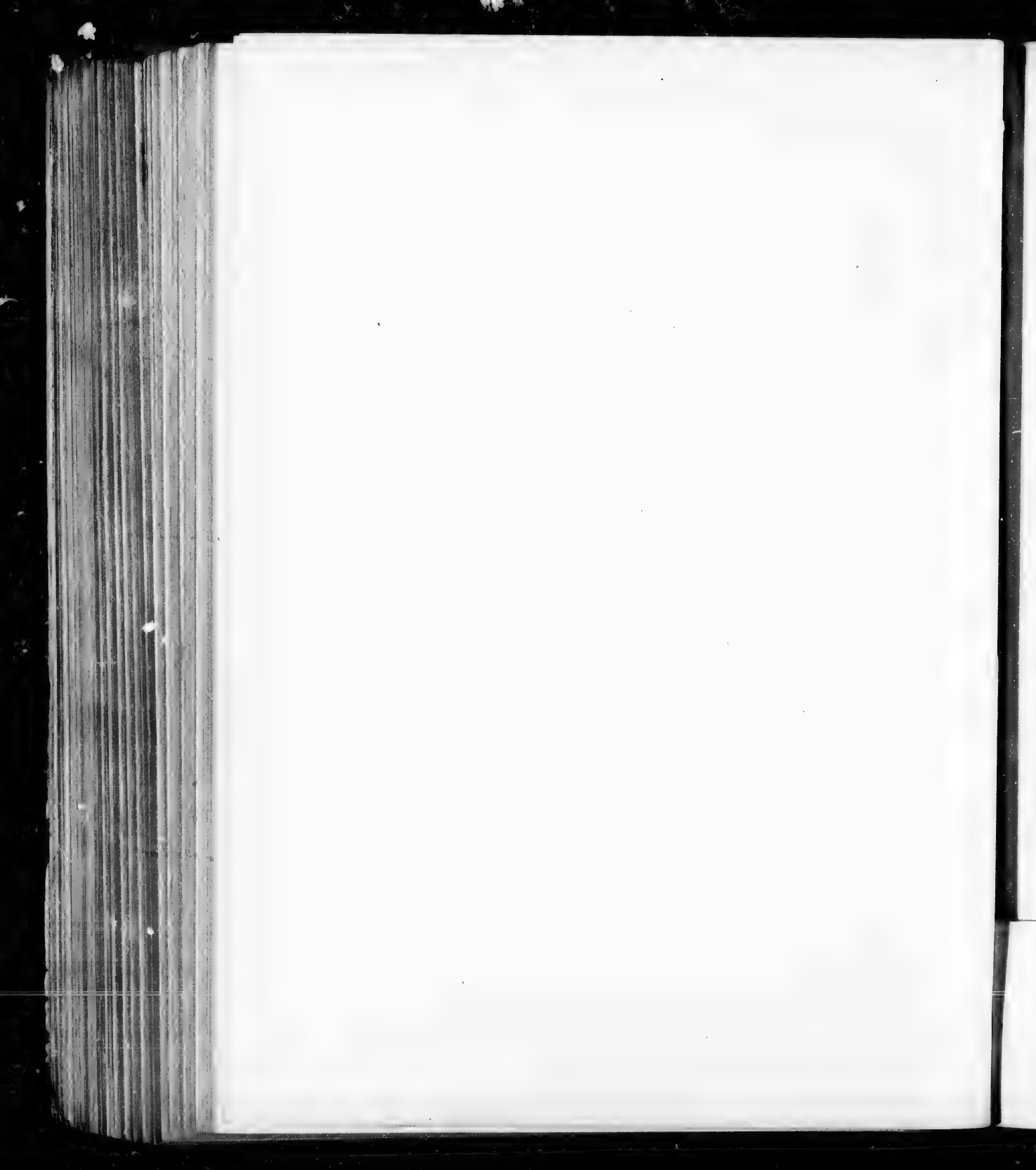


EXHIBIT 1.

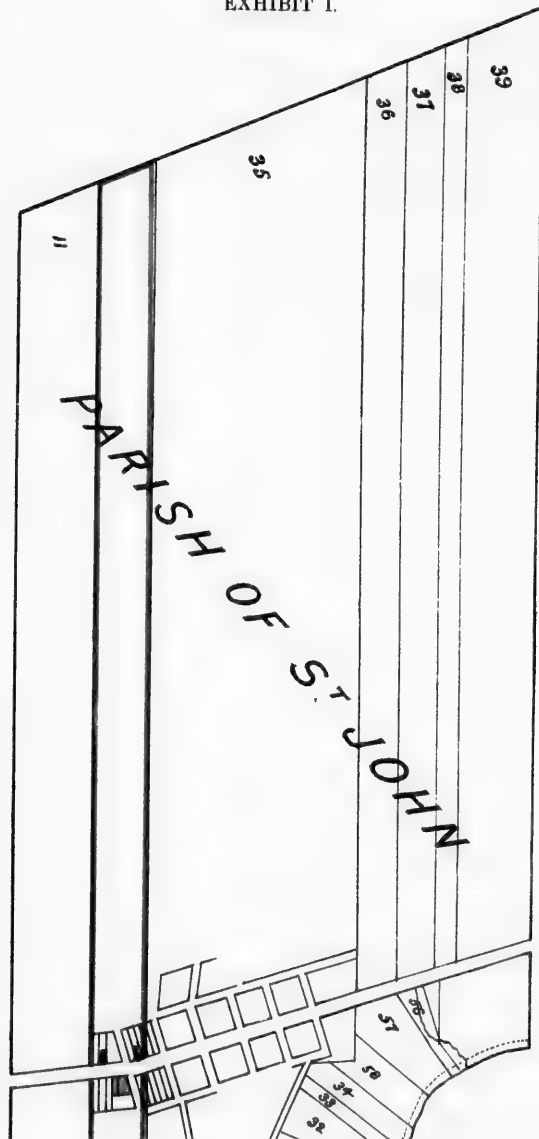
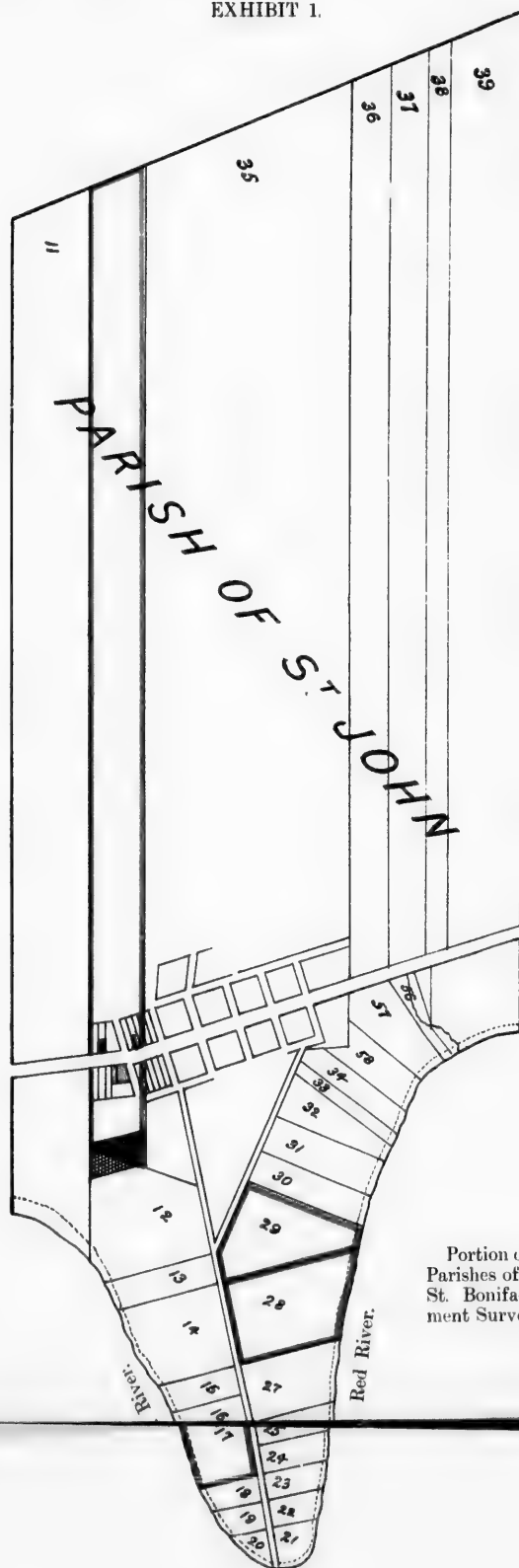


EXHIBIT 1.



Portion of Plan of River Lots in
Parishes of St. John, St. James and
St. Boniface, Dominion Govern-
ment Survey.

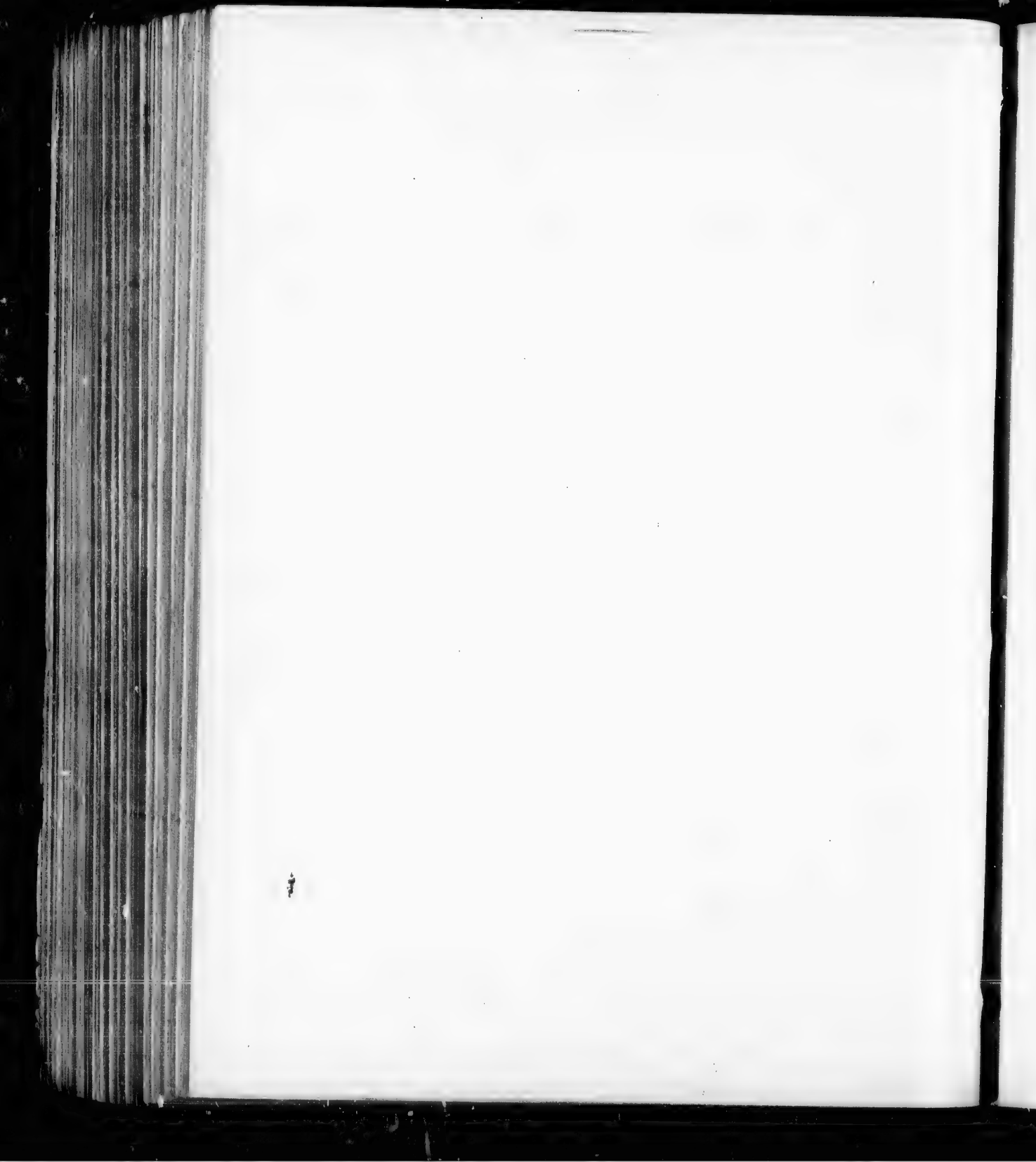


EXHIBIT 2.

CANADA.

DEPUTY-GOVERNOR.

[Seal.]

VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, etc., etc., etc.*

To all to whom these presents shall come—GREETING:

By command:—

Whereas, the lands hereinafter described are part of the lands known as "Dominion Lands," and mentioned in an Act of the Parliament of Canada, passed in the Thirty-fifth year of our reign, and intituled "An Act respecting the Public Lands of the Dominion;" and whereas William G. Fonseca, of the City of Winnipeg, in the Province of Manitoba, in our Dominion of Canada, Gentleman, has applied for a grant of the said lands, and his claim to such grant having been duly investigated by us, he has been found duly entitled thereto. Now know ye that by these Presents we do grant, convey, and assure unto the said William G. Fonseca, his heirs and assigns for ever, all those parcels or tracts of land situate lying and being in the Parish of Saint John, in the County of Selkirk, in the Province of Manitoba, in our Dominion of Canada, and being composed of all those parts of Lots Number Thirty-five, in the said Parish, as shewn on a map or plan of River Lots in the Parishes of Saint John, Saint James and Saint Boniface, in the said Province, dated 1st January, 1875, signed by John Stoughton Dennis, Surveyor-General of Dominion lands, and of record in that branch of the Department of Interior, known as the Dominion Lands office, more particularly described as follows, that is to say:—Being composed of Firstly—Town Lots Numbers 49, 50 and 51 on the westerly side of Maple street. Secondly—Town Lots Numbers 5, 6, 7 and 9 on the easterly side of Austin street. Thirdly—Town Lots lettered E and F in Block Number 14, fronting on the westerly side of Austin street. Fourthly—Town Lots lettered C and D in Block Number 14, fronting on the easterly side of Main street. Fifthly—Town Lot Number 2 in Block Number 12, fronting on Main street and on McTavish street. Sixthly—Town Lot Number 7 in Block Number 11, fronting on Main street and on McTavish street. Seventhly—The easterly half of Town Lot Number 8 in Block Number 11, fronting on the westerly side of Main street. Eighthly—The westerly half of Town Lot Number 4 in Block Number 12, fronting on the easterly side of McTavish street. Ninthly—Town Lots Numbers 1 and 2 in Block B, fronting on McTavish street and on Margaret street. Tenthly—Town Lots Numbers 1, 2, 3 and 4 in Block E, fronting on the southerly side of Fonseca street. Eleventhly—Town Lots Numbers 3, 4, 5, 6, 7 and 8 in Block No. 1, front-

ing on Margaret street and Machray street. Twelfthly—Town Lots Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Block Number 6, fronting on Machray street and on Schultz street. Thirteenthly—Town Lots Numbers 1, 2, 3 and 4 in Block F, fronting on the southerly side of Fonseca street. Fourteenthly—Town Lots Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Block Number 12, fronting on Schultz street and on Charles street. Fifteenthly—Town Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Block Number 11, fronting on Schultz street and on Charles street. Sixteenthly—Town Lots Numbers 1, 2, 3 and 4 in Block G, fronting on the southerly side of Fonseca street. Seventeenthly—Town Lots Numbers 3 and 4 in Block H, fronting on the southerly side of Fonseca street, and eighteenthly, Town Lots Numbers 1, 2, 3, 4 and 5 in Block Number 15, fronting 10 on the westerly side of Charles street, all as shown upon the official plan of the City of Winnipeg, drawn by Geo. McPhillips the Younger, Dominion Land Surveyor, dated the Twenty-second day of June, A. D. 1876, and registered in the Registry office for the County of Selkirk, the 20th day of July, in the year of our Lord 1876, containing by admeasurement 17 acres more or less.

To have and to hold the said parcels or tracts of land unto the said William G. Fonseca, his heirs and assigns forever, saving and reserving nevertheless unto us our successors and assigns the free uses, passage and enjoyment of in over and upon all navigable waters that now are or may be hereafter found on or under or flowing through or upon any part of the said parcels or tracts of land.

20

GIVEN under the great seal of Canada; Witness Joseph Olivier Cotté, Esquire, Deputy of our right and trusty and well beloved counsellor Sir John Douglas Sutherland Campbell (commonly called the Marquis of Lorne), Knight of our most ancient and most noble order of the Thistle, Knight Grand Cross of our most distinguished order of Saint Micheal and Saint George, Governor-General of Canada and Vice-Admiral of the same.

At Ottawa this fifth day of December in the year of our Lord one thousand eight hundred and seventy-nine and in the forty-third year of our reign.

By Command:

J. S. DENNIS, Deputy of the Minister of the Interior.

30

EDOUARD J. LANGEVIN, Under Sec'y of State.

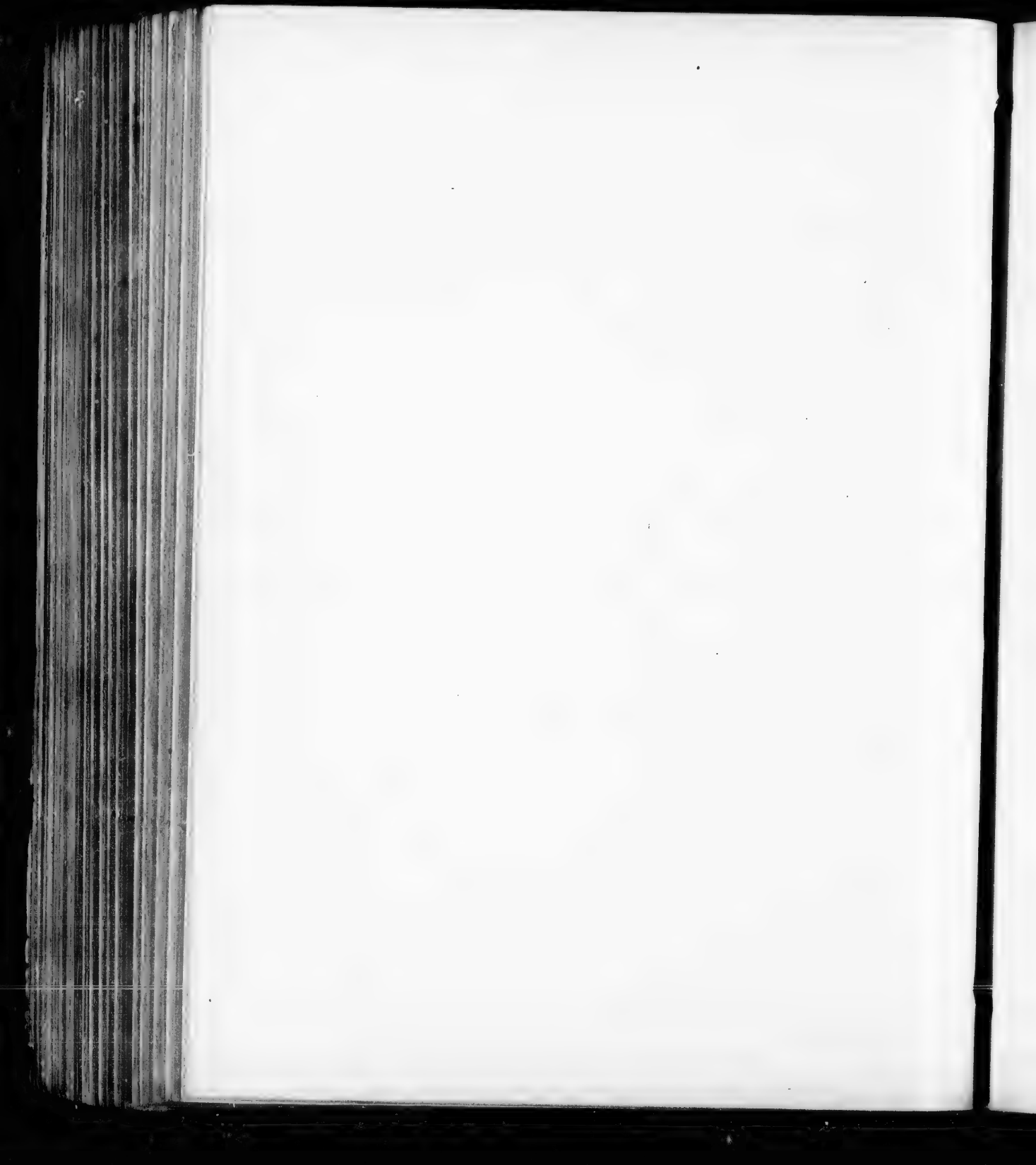


EXHIBIT 4.

Mortgage dated 22nd March, 1876, between William Logan and Robert Gunn. Consideration \$608.00. Description of land :—Parts of lots D and E, on the East side of Main street, according to a map or plan of Point Douglas Common, registered in the Registry Office for the County of Selkirk, better known and described as follows :—Commencing at the north-west angle of lot D, fronting on Main street and Fonseca street, thence in an easterly direction along Fonseca street four chains thence in a southerly direction at right angles 92 feet, thence in a westerly direction parallel with Fonseca street to Main street, thence along Main street 92 feet to the place of beginning.

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EXHIBIT 5.

Deed dated 20th June, 1876, between William Logan and Frederick C. Mercer. Consideration \$1,050. Description of land same as in Exhibit 4.

EXHIBIT 6.

Deed dated 7th December, 1875, between William Logan and wife and David H. Thomas. Consideration \$900.00. Description of land :—Lots D and E, according to the plan of the Point Douglas Common, on record in the Registry Office in and for the County of Selkirk, lot D fronting on Main street and Fonseca street, lot E fronting on Fonseca and Austin streets, together with the buildings thereon, subject nevertheless to the payment of \$500 with interest to be paid to Robert Gunn, of Kildonan, on a mortgage held and duly registered by him in said County aforesaid.

EXHIBIT 7.

Deed dated 22nd March, 1876, between David Henry Thomas and William Logan. Consideration \$700. Description of land :—Same as in Exhibit 4.

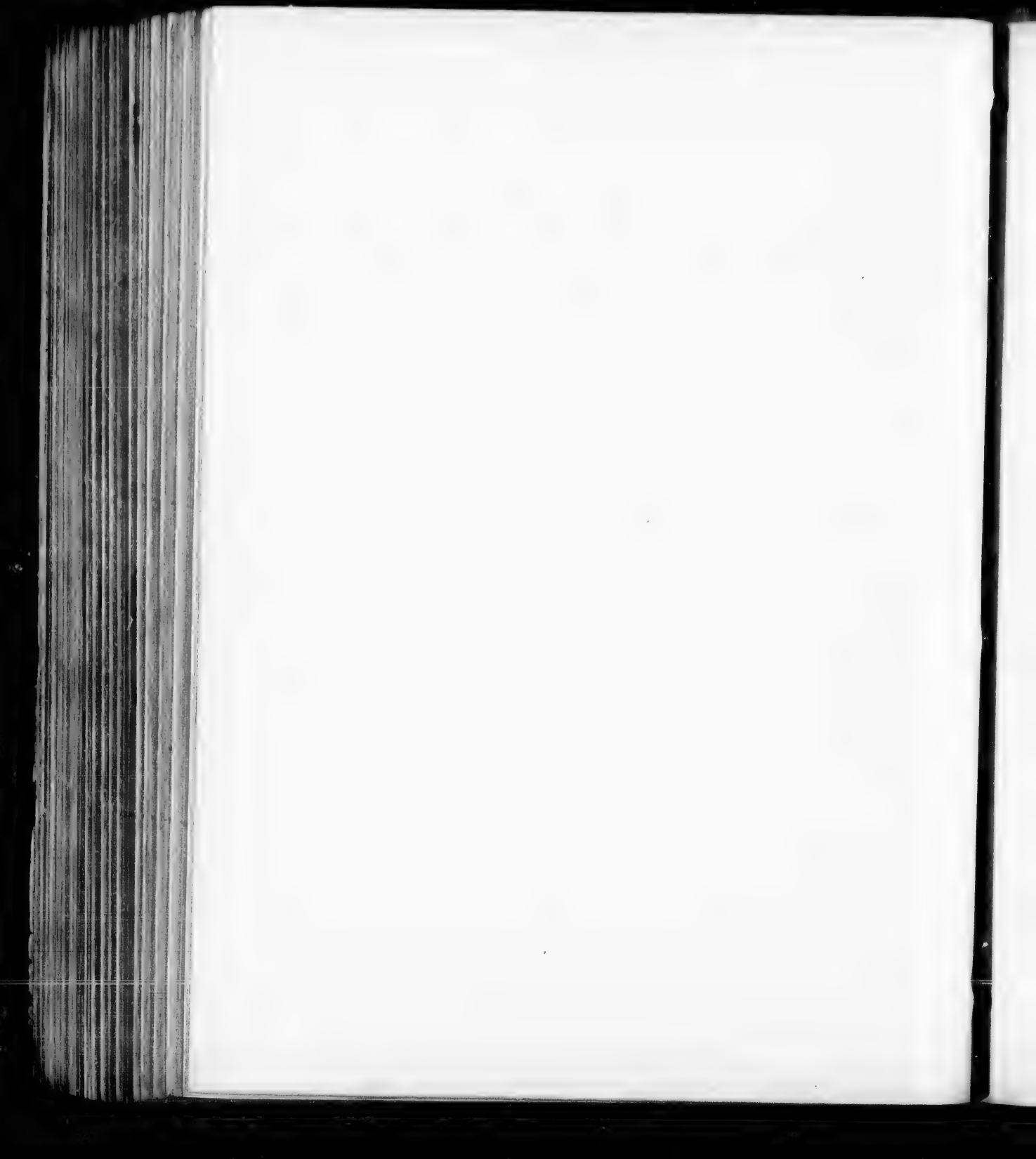


EXHIBIT 8.

Deed dated 28th March, 1876, between David Henry Thomas and William Logan. Consideration \$100. Description of land:—That portion of lots F and E, in Block 14, according to a map or plan of Point Douglas, on record in the Registry Office in the County of Selkirk, commencing at a point on the west side of Austin street, forty-one feet, northerly from the line between lots F and G, thence in a westerly course parallel to the line between lots F and G, ninety feet, thence at right angles northerly thirty feet, thence easterly parallel to the said line between lots F and G to the line defining the westerly side of Austin street; thence southerly along the said westerly line of Austin street thirty feet more or less to the place of beginning.

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EXHIBIT 9.

Deed dated 19th June, 1876. Between David Henry Thomas and Frederick C. Mercer. Consideration \$150. Description of land: a portion of lot E in block 14, of the Point Douglas Common property, situate on the south-west corner of Fonseca and Austin streets, in the City of Winnipeg, better described as follows:—commencing at a point on the south side of Fonseca street, distant four chains in a course S. 50°, 30', 50", from the intersection of the said south side of Fonseca street with the east side of Main street; thence southerly at right angles to Fonseca street ninety-two feet; thence easterly parallel to Fonseca street, one chain more or less, to the west side of Austin street; thence northerly along the west side of Austin street, ninety-two feet to the south side of Fonseca street; thence N. 50°, 30', 50" W. along the south side of Fonseca street one chain more or less to the place of beginning.

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EXHIBIT 10.

Same as Exhibit 5.

EXHIBIT 11.

Mortgage dated 29th June, 1876. Between Frederick C. Mercer and Robert Gunn. Consideration \$500. Description of land:

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Part of lots D and E in block 14 Point Douglas Common described as follows: Commencing at the north west corner of D at the intersection of Main and Fonseca

Streets, thence in an easterly direction along the southerly line of Fonseca Street four chains, thence southerly at right angles from Fonseca Street 92 feet, thence westerly parallel to Fonseca Street four chains more or less to Main Street, thence along the easterly line of Main Street 92 feet more or less to the place of beginning.

EXHIBIT 12.

Assignment of mortgage. Between Robert Gunn and Dame Eliza Mercer. Consideration \$500. Description of lands same as in Exhibit 11.

EXHIBIT 13.

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Deed dated 8th November, 1880. Between Frederick C. Mercer and Charles H. Pattison. Consideration \$200. Description of land: parts of lots D and E in block 14, Point Douglas Common, in the City of Winnipeg, described as follows: Firstly—commencing at the north-west corner of lot D at the intersection of Main and Fonseca streets; thence easterly along the northerly boundary of said lot D 132 feet; thence southerly and at right angles to the northerly boundary of said lot D, 92 feet, thence westerly and parallel with the northerly boundary of said lot D, 132 feet more or less to Main street, thence along the westerly boundary of said lot D, 92 feet to the place of beginning, and secondly commencing at a point on the southerly boundary of Fonseca street, at the distance of 198 feet easterly from the north-west corner of lot D, thence easterly and along the northerly boundary of lot E, 132 feet more or less to Austin street, thence southerly and along the easterly boundary of said lot E, 92 feet, thence westerly and parallel with the northerly boundary of lot E, 132 feet, thence northerly 92 feet to the place of beginning * * * according to a map or plan thereof drawn by Duncan Sinclair, D. L. S., and filed in the Registry Office for the County of Selkirk.

EXHIBIT 14.

Deed dated 31st January, 1882, between Charles H. Pattison and Eliza D. Mercer. Consideration \$6000. Description of land:—Same as in Exhibit 13.

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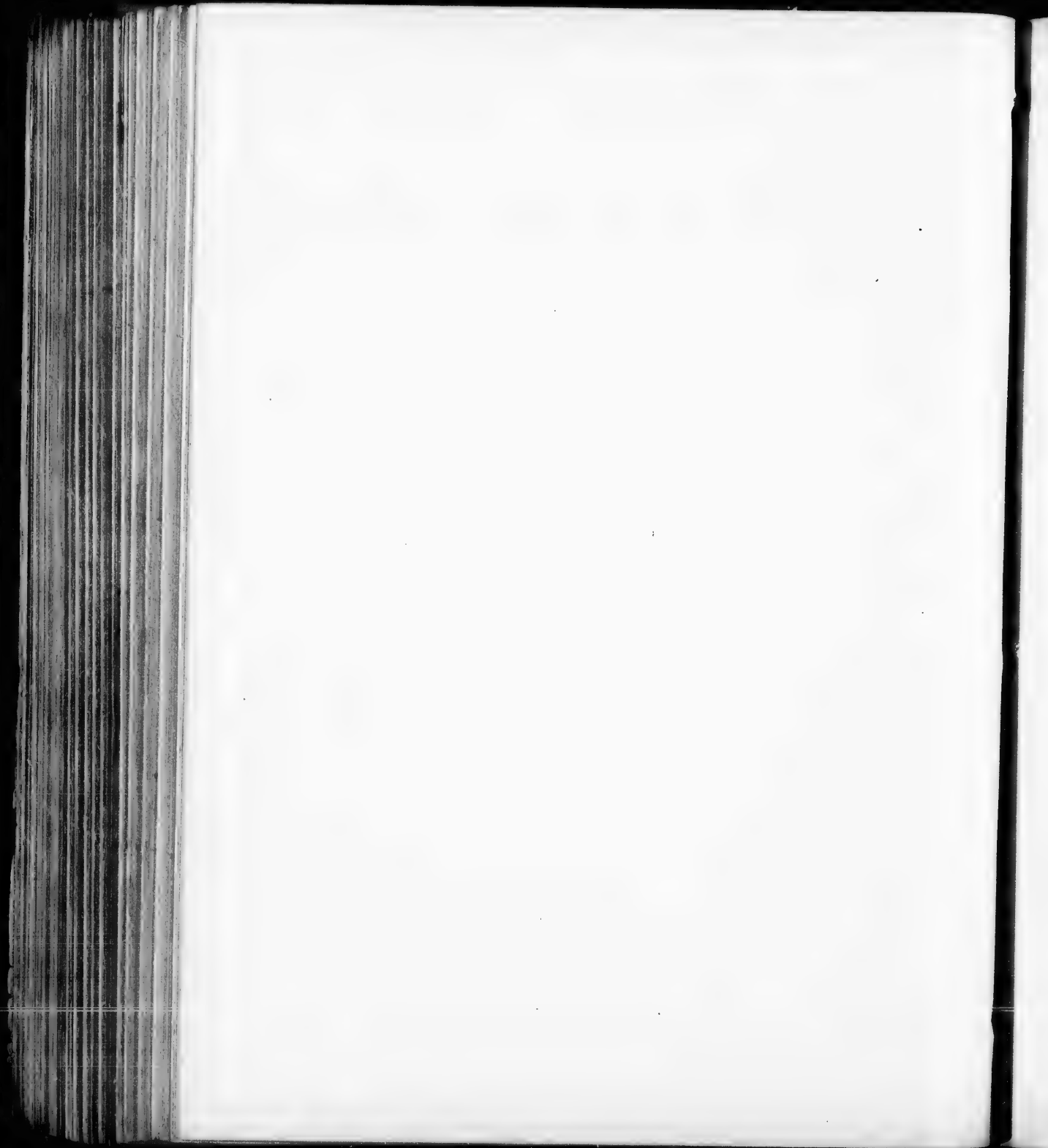


EXHIBIT 15.

Deed dated 24th December, 1879, between William Gomez Fonseca, of the first part and John Schultz, of the second part. Consideration \$1,250. Description of land:—An undivided one-half share or interest in lards which were granted to the party of the first part by a patent from the Crown, bearing date the fifth day of the present month and are the lands agreed to be conveyed by an agreement between the said parties bearing date the seventeenth day of November, A. D., 1879, viz:—The following portions of the land known as the Point Douglas Common, to wit:—Lots number forty-nine, fifty and fifty-one on the west side of Maple street, Lots five, six, seven and nine on the east side of Austin street. Lot two in block twelve. Lot 10 seven in block eleven, and the east half of lot eight in block eleven. The west half of lot five in block twelve. Lots one and two in block B. Lots one, two, three and four in block E. Lots three, four, five, six, seven and eight in block one Margaret and Mackreay streets. Lot one, two, three, four, five, six, seven, eight, nine and ten in block six on Mackreay and Schultz streets. Lots one, two, three, four in block F. Lots one, two, three, four, five, six, seven, eight, nine and ten in block twelve, between Charles and Schultz streets. Lots one to ten inclusive in block eleven, between Schultz and Charles streets. Lots one, two, three and four in block G. Lots three and four in block H, and lots one, two, three, four and five in block fifteen on Charles street.

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EXHIBIT 16.

Deed dated 9th day of October, 1882. Between Frederick C. Mercer and Eliza Mercer. Consideration one dollar. Description of land: a portion of lot D in block 14, subdivision of lot 35, Dominion Government Survey, of the Parish of St. John, as laid down in the official map or plan of the said City of Winnipeg, which said portion may be more particularly known and described as follows: Commencing at a point on the northerly boundary of said lot D at the distance of one hundred and sixty-five feet easterly from the north-west corner of said lot D; thence southerly and at right angles with the northern boundary of said lot D ninety-two feet; thence 30 westerly and parallel with the northern boundary of said lot D thirty-three feet; thence northerly and at right angles with the northerly boundary of said lot D ninety-two feet more or less to the northerly boundary of said lot D; thence easterly and along the northerly boundary of said lot D thirty-three feet more or less to the place of beginning.

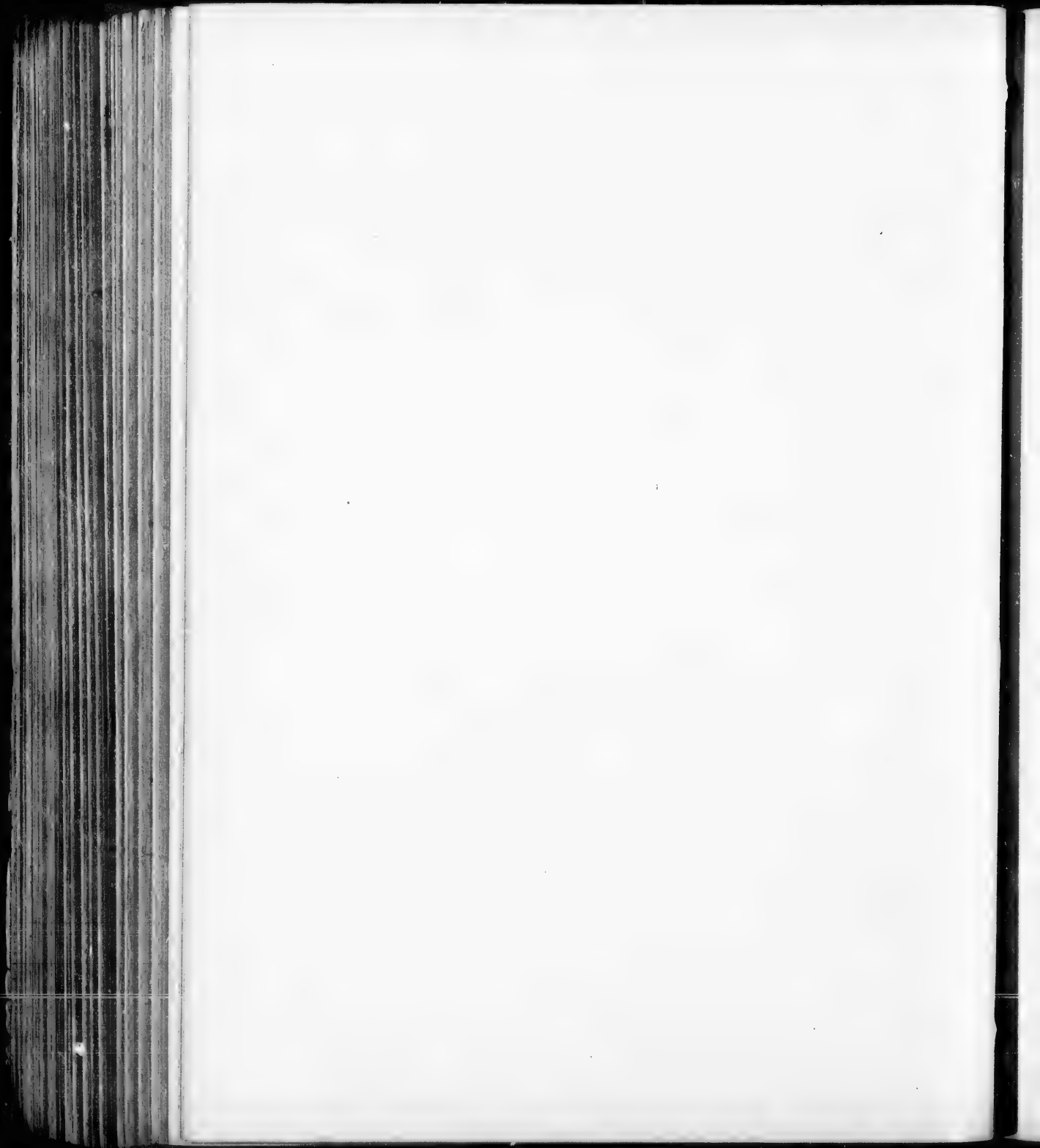


EXHIBIT 17.

Deed dated 19th December, 1876. Between D. H. Thomas and John Schultz. Consideration \$1300. Description of land: a portion of lots C, D, E and F, according to a map or plan of the Point Douglas Estate, made by one Duncan Sinclair, Deputy Land Surveyor, recorded in the Registry Office for the County of Selkirk, commencing at a point forty feet in a northerly direction along Main street from the line dividing lots B and C; thence in an easterly direction two hundred and sixty feet more or less, running along the line and property of one John Freeman, thence at right angles in a northerly direction one hundred and thirty-five feet more or less, running along the lines and property of one Thomas Manley, tradesman of the said City, and Messrs. McLean 10 and McDonald, heretofore known by the name and firm of Messrs. McLean and McDonald, butchers, of the said City of Winnipeg, to the line and property of Frederick C. Mercer, merchant of the said City; thence in a westerly direction 300 feet more or less, running along the line and property of the said Frederick C. Mercer to Main street; thence in a southerly direction forty-two feet more or less along Main street to the place of beginning.

EXHIBIT 18.

This indenture made this fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-two,

Between John Sutherland, Edmund L. Barber, William G. Fonseca, Alexander M. 20 Brown, Walter R. Bown, James Austin, John C. Schultz, George Groat, Neil Livingstone, Thomas Spence, His Grace the Right Reverend Alexander Tache, Charles Bouvette, John McTavish, James C. Bird, Secretary of and on behalf of the Manitoba Brick Company, Thomas Lusted, Henry Johnstone, William G. Fonseca and Rollin P. Meade, Executors of the last will and testament of the late Neil McDonald deceased, all of the Town of Winnipeg, in the County of Selkirk, in the Province of Manitoba, Gentlemen, of the first part, and John Sutherland, Edmund L. Barber, Alexander M. Brown, Walter R. Bown and William G. Fonseca, all of the said Town of Winnipeg, in the County and Province aforesaid, Gentlemen, of the second part.

Whereas, the parties of the first part are entitled to an interest in a common to 30 the land extending back from their different possessions on the river as formerly laid out by Lord Selkirk, as belonging to the said possessions;—

And whereas it has been agreed upon by the parties hereto that the said common so belonging and attached to the possessions aforesaid, shall be laid out in accordance with the map or plan now registered in the Registry Office for the County of Selkirk aforesaid;

And whereas the said land so laid out in plots in accordance with the said map or plan is to be sold and the monies arising from such sale or sales is to be held in trust and divided proportionally, in accordance with a resolution passed at a public meeting of the shareholders held at Point Douglas on the twenty-fourth day of July, A.D. 1872, among the different parties entitled to the benefits and profits thereof;

And whereas it has been agreed upon by all the parties hereto that Trustees shall be appointed yearly for the purpose of carrying out the trust herein before mentioned for the sale of the said lands, and the said parties of the second part have been appointed for the first ensuing year as such Trustees, and they have accepted such trust, said parties of the second part covenanting and agreeing with the said parties of the second part that they the said parties of the second part will make a correct report and return a true account of their acts in the premises at the expiration of said term, and will surrender up all books, papers, documents, valuable securities and monies at the end of said term, as may then be in their hands or possessions to the said parties of the first part, to be by them delivered to the trustees appointed for the next ensuing term;

Now this Indenture witnesseth, that the said parties of the first part do hereby grant and convey unto the said parties of the second part, their successors and assigns, all and singular the lands before mentioned, and which may be particularly known as Lot Number Two hundred and forty-four, or as the reserve in common belonging to the owners, occupiers and possessors of Point Douglas: To have and to hold the same for the purposes aforesaid unto and to the use of them the said parties of the second part their successors and assigns for ever.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of

(Signed,) Richard F. Huggard, as to the signature of Wm. Gomez Fonseca.

(Signed,) Willoughby Clark.

(Signed,)

John Sutherland,
E. L. Barber,
Wm. Gomez Fonseca,
A. M. Brown,
Walter R. Bown,
James Austin,
Per C. W. Radiger, Attorney.

Seal.

"

"

"

Seal.

Seal.

"

"

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"

"

(Signed,) John Schultz,

" Geo. Groat,

" Neil Livingston, per Wm. G. Fonseca, Atty.

" Thos. Spence,

" Alex. Arch, of St. Boniface,

" Thos. Lusted,

" C. Bouvette,

" Curtis J. Bird, for Manitoba Brick Co.,

(Signed), Henry Johnston,	Seal.
" Wm. Gomez Fonseca,	"
" Rollin P. Meade,	"
" John Sutherland,	"
" E. L. Barber,	"
" Walter Robert Brown,	"
" A. M. Brown.	"
" Wm. Gomez Fonseca.	"

EXHIBIT 19.

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William Logan to David H. Thomas, dated 26 June, 1873. Consideration \$2500.-
 00. Description of land: One chain frontage on Main Street, Winnipeg, by which it
 is bounded on the one side i. e. the west side running eastward four chains and bounded
 by the common or reserve of Point Douglas on which said lot of land is situated,
 and on the north by an adjoining lot and property of said William Logan where he
 resides, and on the south by the property of E. L. Barber on which his said E. L.
 Barber's store or place of business is carried on together with the building thereon
 known as the Point Douglass House with the furniture complete therein in the bar
 room and hotel combined, also one board building used for a store house and stables
 all of which is built on said lot above described, the second of said parcels or tracts 20
 of lands having four and one half chains frontage more or less on the west side of the
 Red River by which it is bounded on the north side by the public highway leading to
 the Point Douglas ferry, and on the east by the property of E. L. Barber and on the
 west by the property of John Sutherland and also more particularly known as the
 Huppé lot for years past.

EXHIBIT 20.

No. 3,740, M. A.

DEPARTMENT OF INTERIOR,

15th September, 1883.

30

GENTLEMEN,

I have the honour by direction of the Minister of the Interior to acknowledge the
 receipt of your letter dated 4th ultimo, asking to be informed of the result of the

application of William Logan, for letters patent under the Manitoba Act, for Town lots C, D, E and F, on Point Douglas Common and in reply to inform you that the claim of Logan, to the said lands was not considered to be a valid one.

I have the honor to be,

Gentleman,

Your obedient servant,

(Signed,)

JOHN R. HALL,
Acting Secretary.

Messrs. GLASS & GLASS,
Barristers,
Winnipeg.

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EXHIBIT 21.

OTTAWA, 8th June, 1881.

SIR,

I am requested by the Hon. the Acting Minister of the Interior to reply to your letter of May last, addressed to Sir John Macdonald, urging your claim to the difference between 17 acres the area which you received and 160 acres the area which you claimed on Point Douglas Common, and I am to say that having investigated the subject the Acting Minister is of the opinion that the settlement made as already alluded to, that is to say giving you 17 acres, was a liberal commutation of your right, and 20 he cannot therefore recommend to Council any further grant in your favor.

I have the honor to be, Sir,

Your obedient servant,

(Signed,)

J. S. DENNIS,

Deputy Minister of the Interior.

W. G. Fonseca, Esq.,
Winnipeg, Manitoba.

EXHIBIT 22.

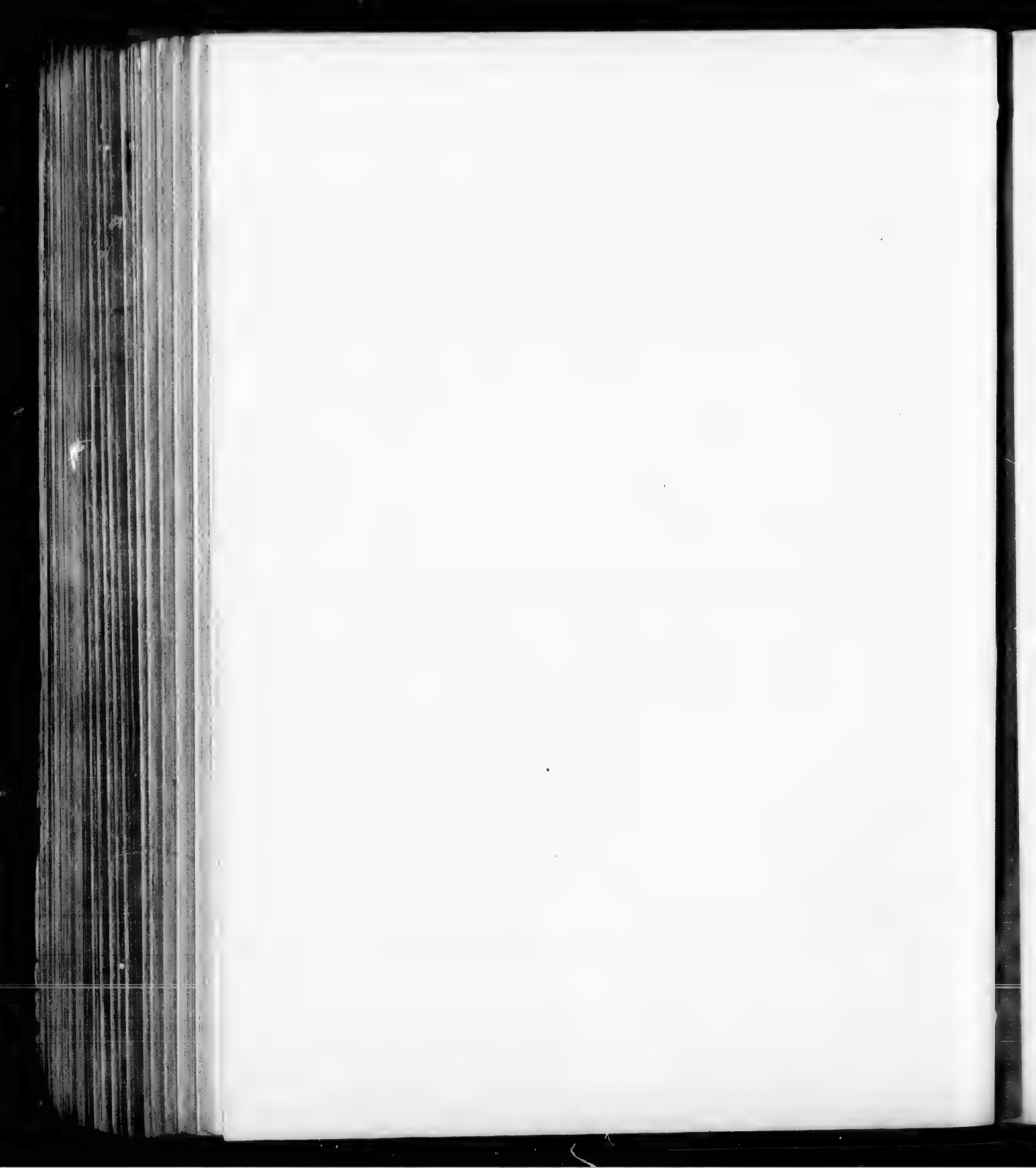
DEPARTMENT OF THE INTERIOR.

OTTAWA, JUNE 21ST, 1880.

30

Memorandum.

Referring to the Order-in-Council, dated 10th May, 1877, approving of the Report of the then Minister of the Interior, recommending a certain settlement of the claims



preferred, by the holders of lots at Point Douglas, to the large tract of unoccupied land, known as the Point Douglas Common, lying in rear of the said lots, the undersigned has the honor to report to Council that the several claimants refused for a long time to accept this proposal of the Government, but by a communication recently received it appears that the great majority of the persons interested have expressed their willingness to accede to the terms offered, and have requested that as little time as possible be allowed to elapse before closing the matter.

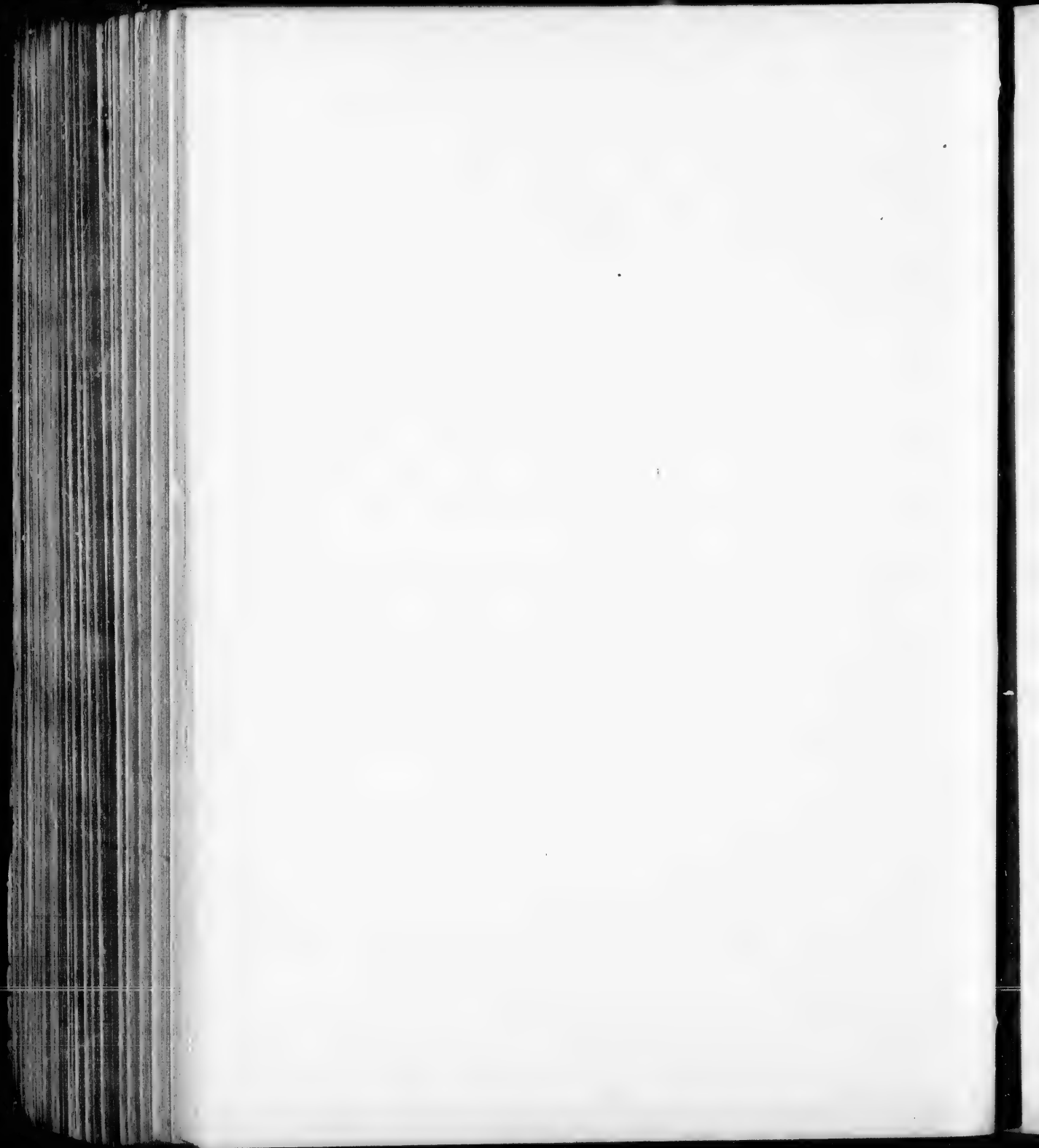
The several claimants, however, call the attention of the Government to the fact that some years before the claims to the Common had been investigated, and while they—the claimants—were under the belief that the said Common belonged right- 10 fully to them as appurtenances to their lots on the river, action was taken by Trustees, who had been appointed on their behalf, to survey and lay out the easterly part of the said Common into town lots, and in order to raise money to pay for the said surveys and the maps thereof, and to construct streets through the said property, the said Trustees, by and with the authority of the said claimants, sold some of the lots so laid out, amounting in all to some 26½ acres. Some of these lots were paid for in full, but on others certain instalments and interest remain due.

The claimants now ask, in consideration of their having expended all of the monies received as above in developing the property, whereby the remaining portion of the Common (some hundreds of acres in extent), owned by the Government, has 20 been, it is alleged, greatly increased in value, that the area covered by the said small lots be not included in the block of land to be given them in commutation of their claims to the Common, but that the area to be given them be independent of such small lots, and that the Government make patents direct to the persons owning the said small lots, on the condition that those who may be in arrear for any instalments and interest on the purchase of such lots, shall pay such arrears of instalments into this Department.

The undersigned, considering all the circumstances, is of opinion that the above request is a reasonable one, and he recommends the same to the favorable consideration of Council.

The Order-in-Council of the 12th May, 1877, authorized the issue of a patent 30 for the land given in commutation of the claims preferred by the Point holders to such persons as might be indicated with that view by the claimants, "in trust for the several owners of the Point lots." A different method of making the allotments has been considered, and has been discussed with the claimants, one which would result in less difficulty and expense than would be involved in a partition suit under the trust deed contemplated, and the following mode has been mutually agreed upon for that purpose, subject to the approval of the Honorable the Privy Council, viz:

1. That the projection into city lots of the easterly part of the Common herein-



before mentioned be extended sufficiently far back to make up the area (such area to include streets as well as lots) to be given in commutation.

2. That tickets numbered to correspond with the several numbers of the said city lots, embraced in the commutation area, shall be placed in a box, and that a disinterested person shall draw at random from such box, one ticket at a time, for each claimant, according to a list to be prepared, which list shall show the numbers of the original holdings or Point lots; also the names of the owners or reputed owners of such lots; and shall also show opposite to each such name the number of such city lot which would go to make up the parcel or allotment appurtenant to such original Point lot, and extended to form the commutation therefor, and in such drawing, the 10 city lots corresponding to the number on the ticket shall be allotted to the owner of the Point lot, for whom the ticket is drawn, the drawing continuing until all the tickets are drawn.

3. The patent to be issued for the respective city lots, so drawn, to such claimants as may severally be legally entitled thereto.

All of which is respectfully submitted.

(Signed),

JOHN A. MACDONALD,
Minister of the Interior.

Copy of a Report of a Committee of the Honorable the Privy Council, approved 20 by His Excellency the Governor-General-in-Council, on the 29th June, 1880.

On a memorandum, dated 21st June, 1880, from the Honorable the Minister of the Interior, relating to the Order-in-Council, dated 10th May, 1877, approving of the Report of the then Minister of the Interior, recommending a certain settlement of the claims preferred by the holders of lots at Point Douglas to the large tract of unoccupied land known as the Point Douglas Common, lying in rear of the said lots in the Province of Manitoba.

The Minister states that the several claimants refused for a long time to accept this proposal of the Government, but that by a communication recently received it appears that the great majority of the persons interested have expressed their willingness to accede to the terms offered, and have requested that as little time as possible be allowed to elapse before closing the matter.

The Committee concur in the recommendations submitted in the said memorandum, and advise that the same be approved and carried into effect.

Certified,

(Signed,)

J. O. COTE,
Clerk P. C.

The Honorable

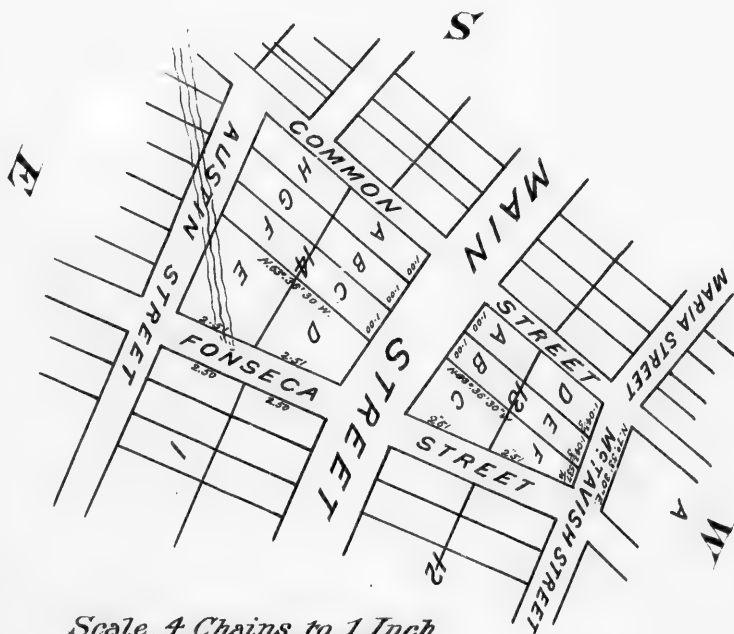
The Minister of the Interior.

Certified to be a correct copy of a document of record in the Department of the Interior.

P. S. DOUGLASS,
For the Secretary.

EXHIBIT 23.

COPY OF PLAN.



Scale. 4 Chains to 1 Inch.

N

I certify the above to be a correct tracing of Block Number Fourteen (14) east of Main street, part of Parish Lot Number Thirty-five (35), Saint John, shown on a plan

made by George McPhillips, Jun., D. L. S., dated the 22nd day of June, 1876, and deposited for registration in the Registry Office for the County of Selkirk by the Mayor and Council of the City of Winnipeg on the 20th day of July, 1876.

JOHN W. KENNEDY,
Deputy Registrar.

Deposited for registration in accordance with By-Law No. 57, passed on the 17th July, A. D. 1876.

Official
Seal of the
City of
Winnipeg.

(Signed,)

W. N. KENNEDY,
Mayor.

(Signed,)

A. M. BROWN,
City Clerk. 10

EXHIBIT 26.

Articles of agreement, dated seventeenth day of November, A. D. 1879, between William Gomez Fonseca, of the City of Winnipeg, Real Estate Dealer, of the First Part; and John Schultz, of the City of Winnipeg, Merchant, of the Second Part;

Whereas the said party of the First Part hath agreed to sell to the party of the Second Part and the party of the Second Part hath agreed to purchase of and from the said party of the First Part, all and singular, that certain parcel or tract of land, situate, lying and being in the said City of Winnipeg, and which may be described as an undivided one half interest in certain lands on the property known on the Dominion Government Survey of the Parish of St. Johns, Lot Number 35, a description of which is annexed hereto, and duly registered and filed in the Registry Office for the said County of Selkirk, together with all the privileges and appurtenances thereto belonging, at or for the price or sum of Twelve hundred and fifty dollars of lawful money of Canada, payable in manner and on the days and times hereinafter mentioned, that is to say:—

The whole amount to be paid and is now paid, the receipt of which is hereby acknowledged. And the transfer of the said one half interest to be made by deed from the said Fonseca to the said Schultz within one month from the issue of the Patent.

In Witness Whereof, the said parties hereto have hereunto set their Hands and 30
Seals the day and year first above written (In duplicate).

Signed, Sealed and delivered, having
been first read over and explained
in presence of
(Signed,) Walter Robert Bown. }

(Signed,

Wm. G. Fonseca, (Seal.)

"

John Schultz, (Seal.)

The lands referred to after the eleventh of this agreement, are a strip of ten chains wide of what was known as the Point Douglas Common before the Dominion Government Survey and now lot number thirty-five (35) of the Parish of St. John, on its southerly side or next to the Dominion Survey lot eleven of the Parish of St. John and are the lands which are the subject of an application for patent made by the said William Gomez Fonseca, on the sixth day of August, A. D., 1877.

It is however agreed that should the patent issue on the said application include more than seventeen acres then the party of the second part, shall pay to the party of the first part, two hundred and fifty dollars (\$250), within one month of the date of the issue thereof.

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It is also understood and agreed that the parties of the first and second parts, shall make no efforts to obtain from the Government of the Dominion a patent of any lands the ownership of which may be vested in other parties.

Witness our hands and seals the day and date mentioned.

(Signed,) WALTER ROBERT BOWN.

}

(Signed,) WM. G. FONSECA,

"

JOHN SCHULTZ.







EXHIBIT 28.

Deed dated 13th October, 1874, between D. H. Thomas and John Freeman. Consideration \$200. Description of land: Commencing at the north west point of letter "B" in the survey of said Point Douglas Common made by Duncan Sinclair, Esquire, Provincial Land Surveyor on the east side of Main Street in said City, which said survey by a plan or map thereof has been duly registered, thence northerly forty feet, thence in a line parallel with the boundary line of said lot letter "B" and lot letter "C" in same survey in an easterly direction to Austin Street, thence southerly along the front of lot letter "F" where the same fronts on said Austin Street in a southerly direction forty feet, thence along the southern boundary line of lots letters "C" and "F" in said survey to the place of beginning.

EXHIBIT 29.

Deed dated 13th August, 1877, between John Freeman and A. J. Belch. Consideration \$500. Description of land same as in Exhibit 28.

EXHIBIT 30.

Deed dated 2nd August, 1881, between A. J. Belch and T. S. Gray. Consideration \$3100. Description of land same as in Exhibit 28.

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EXHIBIT 31.

Deed dated 17th October, 1872, between Joseph Huppe and William Logan. Consideration \$150. Description of land:—At Point Douglas in the County of Selkirk, measuring four and one-half chains in width by all the depth between the Red River by which it is bounded in front and the road leading from the Point Douglas ferry, which road forms the rear boundary. The lot belonging to John Sutherland bounds the said land on one side and E. L. Barber's lot bounds it on the other.

EXHIBIT 32.

Deed dated 13th March, 1874, between William Logan and Henry McDonnell. Consideration \$1,000. Description of land :—In the City of Winnipeg, in the County of Selkirk aforesaid, measuring four and one-half chains in width, containing four acres, one rood and 23 poles, known as lot numbered 233 and registered in the Hudson Bay Company's Registry ; said lot is bounded on one side by the Red River, on which said lot fronts and the road leading from the Point Douglas ferry, which road forms the rear boundary. The lot belonging to John Sutherland bounds the said lot on one side and E. L. Barber's lot bounds it on the other. The party of the first part particularly excludes (in the sale of the said lands of lot numbered 233 as afore-
 said described) any right or title in any shape or manner thereto belonging in the Point Douglas Common. Together with all and singular the rights, members, easements, privileges and appurtenances thereto belonging, and all reversions, remainders, rents, issues and profits thereto ; and all the estate, right, title, interest, both at law and in equity of him the said party of the first part of, in, to and out of the said lands, hereditaments and premises. 10

EXHIBIT 33.

Deed dated July 5th, 1882, between Henry McDonnell and John Schultz. Consideration \$3,000. Description of land :—Same as in Exhibit 31 with these additional 20 words, " said parcel or tract of land may be further described as lot 24, according to the Dominion Government survey of the Parish of St. John's."

EXHIBIT 34

REGISTRY OFFICE, CITY OF WINNIPEG, JULY 29TH, A.D. 1892, AT 10 O'CLOCK A.M.

An Abstract of all Conveyances, which appear to have been Registered in this Office upon Lot "E," Block 14, part of Lot 35, St. John.

No. of Instrument.	Instrument.	Its Date.	Date of Registry.	GRANTOR.	GRANTEE.	Consideration or amt of Mfg	Quantity of Land and Remarks.
7 Plan.		26 Dec'r, 1870	30 Sep'r, 1872	D. Sinclair, D.L.S.	Sutherland et al.		
577 Trust Deed		15 Oct'r, 1872	12 June, 1873	Sutherland et al.	William Fraser	\$400	Refers to No. 324.
324 Mort.		22 Nov'r, 1872	27 Nov'r, 1872	William Logan.	W. Logan	\$258 18.0	
4006 D. of M.		3 June, 1876	9 June, 1876	W. Fraser	Fred E. Kew	\$500	Refers to No. 428.
325 Agre't to Mort		27 Nov'r, 1872	27 Nov'r, 1872	William Logan.	W. Logan	500	All.
428 Mort.		24 Feb'y, 1873	25 Feb'y, 1873	William Logan et ux.	Robert Gunn.	200	Refers to No. 524.
2883 D. of M.		4 March, 1875	5 March, 1875	Robert Gunn.	D. McVicar	608	Parts of D & E. N.E. part of E, 92 ft wide.
2884 Mort.		4 March, 1875	5 March, 1875	William Logan.	W. Logan	700	Refers to No. 3820.
524 Mort.		13 May, 1873	13 May, 1873	W. Logan	William Logan.	130	Parts of F & E. 8 ft x 90 S.E. corner of E.
4047 D. of M.		26 June, 1876	26 June, 1876	D. McVicar.	McLean & McDonald	150	N.E. part of E, 1 ch. on Fonseca St. x 92 ft on
3820 Mort.		22 Mch, 1876	23 Mch, 1876	William Logan	W. Logan	500	(As described in No. 3820).
4065 D. of M.		29 June, 1876	3 July, 1876	Robert Gunn.	F. C. Mercer	1050	do.
3897 B. & S.		31 Mch, 1876	25 April, 1876	W. Logan & wife.	Robert Gunn	1300	Part of lot E except parts sold Mercer, Mc-
3819 B. & S.		22 Mch, 1876	23 Mch, 1876	D. H. Thomas	Frederick C. Mercer.	300	(As described in No. 3820).
4030 B. & S.		19 June, 1876	20 June, 1876	David Henry Thomas	D. H. Thomas	2500	Refers to No. 6298. [Main & Austin Sts.
4055 Mort.		29 June, 1876	29 June, 1876	F. C. Mercer	John Schultz.	1250	Northerly parts of lots D & E, 92 ft between
4045 B. & S.		20 June, 1876	24 June, 1876	F. C. Mercer	John Schultz.	200	Description indefinite, may include
4579 B. & S.		19 Dec'r, 1876	21 Dec'r, 1876	W. Logan et ux.	F. C. Mercer	470	As described in Deed No. 9907.
8126 A. of M.		7 March, 1879	29 Mch, 1879	Robert Gunn.	D. McVicar	560	do.
6298 Mort.		28 Jan'y, 1878	28 Jan'y, 1878	Charles W. Radiger.	D. McVicar	500	do.
9013 D. of M.		5 Sept'r, 1879	13 Sep'r, 1879	J. H. Sample.	John H. Sample.	500	As described in No. 3820). [Lean & Manly
8762 Mort.		21 July, 1879	28 July, 1879	F. C. Mercer.	C. W. Radiger.	3250	All his interest in Lot 35, (Common.
9465 Agree't.		17 Nov'r, 1879	21 Nov'r, 1879	W. G. Fonseca.	E. Cowland	1250	Refers to No. 6298. [Main & Austin Sts.
9905 P. D. of M.		9 Feb'y, 1880	16 Feb'y, 1880	E. Cowland.	John Schultz.	200	Northerly parts of lots D & E, 92 ft between
9906 P. D. of M.		16 Feb'y, 1880	16 Feb'y, 1880	Eliza Mercer	F. C. Mercer	470	Description indefinite, may include
9907 B. & S.		16 Feb'y, 1880	16 Feb'y, 1880	F. C. Mercer	R. B. Watson	560	As described in Deed No. 9907.
9908 Mort.		5 Dec'r, 1879	19 Mch, 1880	Crown	The Mayor & Council	500	do.
10107 Patent.		1 March, 1880	2 March, 1880	R. B. Watson	W. G. Fonseca.	300	do.
10008 Mort.		1 March, 1880	2 March, 1880	R. B. Watson	H. & J. R. Sutherland	800	As described in No. 9907.
10045 Mort.		8 March, 1880	9 March, 1880	Nellie Pritchard	R. B. Watson	300	do.
10046 B. & S.		26 Feb'y, 1880	9 March, 1880	R. B. Watson	Nellie Pritchard	800	do.
10147 D. of M.		25 Mch, 1880	25 Mch, 1880	H. Sutherland et al.	R. B. Watson		Refers to No. 10008.

EXHIBIT 34—CONTINUED.

No. of Instrument.	Instrument.	Its Date.	Date of Registry.	GRANTOR.	GRANTEE.	Consideration or amt of Mfg.	Quantity of Land and Remarks.
10146 A. of M.	25 Mch, 1880	25 Mch, 1880	25 Mch, 1880	R. B. Watson	George Winks.	300	As described in No. 9907.
10107 Patent.	5 Dec'r, 1879	19 Mch, 1880	19 Mch, 1880	Crown.	W. G. Fonseca.	100	Lot E, entered before.
3841 B. & S.	28 Mch, 1876	1 April, 1876	1 April, 1876	D. H. Thomas	W. Logan	100	N.E. 1 corner of lot 30 x 90.
4064 D. of M.	29 June, 1876	3 July, 1876	3 July, 1876	R. Gunn	W. Logan	200	Refers to No. 2884.
4361 B. & S.	20 Sep'r, 1876	30 Sep'r, 1876	30 Sep'r, 1876	D. H. Thomas	Thos. Manley	135	Part of lot 179.4 on Austin St. x 1-22 1/2.
4645 Mort.	25 Jan'y, 1877	31 Jan'y, 1877	31 Jan'y, 1877	Thos. Manley	A. J. Palmer	200	do.
11796 B. & S.	8 Nov'r, 1880	11 Nov'r, 1880	11 Nov'r, 1880	F. C. Mercer	C. H. Pattison	200	Part of lot.
14300 B. & S.	27 Feb'y, 1878	19 May, 1881	19 May, 1881	T. Manley	F. Kernemon	200	do.
14325 B. & S.	30 May, 1881	31 May, 1881	31 May, 1881	F. Kernemon	J. W. Johnson	500	do.
16618 B. & S.	Augst, 1881	25 Augst, 1881	25 Augst, 1881	J. W. Johnson	R. Phair	1200	do.
17421 D. of M.	16 June, 1877	16 Sep'r, 1881	16 Sep'r, 1881	A. J. Palmer	Thos. Manley		Refers to No. 4645.
10484 Lis Pendens.	10 May, 1880	11 May, 1880	11 May, 1880	McDonald et al	vs. Fonseca et al		All.
23792 Lis Pendens.	12 Jan'y, 1882	13 Jan'y, 1882	13 Jan'y, 1882	Logan	vs. Schultz		Part of lot.
26214 B. & S.	31 Jan'y, 1882	20 Feb'y, 1882	20 Feb'y, 1882	C. H. Pattison	Eliza Mercer	6000	do.
3815 B. & S.	7 Dec'r, 1875	23 Mch, 1876	23 Mch, 1876	Wm. Logan et ux	D. H. Thomas	900	All.

I certify the above to be correct.

JOHN W. KENNEDY, Dep. Registrar.

EXHIBIT 35.

REGISTRY OFFICE, CITY OF WINNIPEG, JULY 4TH, A.D. 1883, AT 10 O'CLOCK A.M.
An Abstract of all Conveyances which appear to have been Registered in this Office upon Lot "D," in Block 14, Part of Lot 35 St. John.

EXHIBIT 35.

REGISTRY OFFICE, CITY OF WINNIPEG, JULY 4TH, A.D. 1883, AT 10 O'CLOCK A.M.

An Abstract of all Conveyances which appear to have been Registered in this Office upon Lot "D," in Block 14, Part of Lot 35 St. John, Plan 7.

No. of Instrument.	Instrument.	Its Date.	Date of Registry.	GRANTOR.	GRANTEE.	Consideration or amt of Mfg.	Quantity of Land and Remarks.
7 Plan		26 Dec'r, 1870	30 Sept'r, 1872	D. Sinclair, D.L.S.	.....		
577 Trust Deed.		15 Oct'r, 1872	12 June, 1873	Sutherland et al.	.....		
324 Mort.		22 Nov'r, 1872	27 Nov'r, 1872	William Fraser.	.....	400	All.
4006 D. of M.		3 June, 1876	9 June, 1876	William Logan	.....	258 180	Refers to No. 324.
325 Agmt to Mort.		27 Nov'r, 1872	21 Nov'r, 1872	F. E. Kew	.....	500	Refers to No. 425.
425 Mort.		24 Feb'y, 1873	25 Feb'y, 1873	Wm. Logan et ux.	.....	500	Refers to No. 425.
2883 D. of M.		4 March, 1875	5 March, 1875	Robert Gunn	.....	500	All.
2884 Mort.		4 March, 1875	do.	W. Logan	.....	500	All.
524 Mort.		13 May, 1873	13 May, 1873	William Logan	.....	210	All.
3815 B. & S.		7 Dec'r, 1875	23 Mch, 1876	D. McVicar	.....	900	All.
4047 D. of M.		26 June, 1876	26 June, 1876	D. H. Thomas	.....	608	Refers to No. 524.
3820 Mort.		22 Mch, 1876	23 Mch, 1876	W. Logan	.....	700	Refers to No. 3820.
4065 D. of M.		29 June, 1876	3 July, 1876	Robert Gunn	.....	500	Part of lot.
3819 B. & S.		22 Mch, 1876	23 Mch, 1876	D. H. Thomas	.....	1050	Part of lot.
4055 Mort.		29 June, 1876	29 June, 1876	F. C. Mercer	.....	1300	Part of Lot D not sold Mercer.
4045 B. & S.		20 June, 1876	24 June, 1876	W. Logan et ux.	.....	500	As described in No. 3820.
4519 B. & S.		19 Dec'r, 1876	21 Dec'r, 1876	D. H. Thomas	.....	2500	His interest in common.
8126 A. of M.		7 March, 1879	29 Mch, 1879	Robert Gunn	.....	3250	Refers to No. 6298.
6298 Mort.		28 Jan'y, 1878	28 Jan'y, 1878	C. W. Radiger	.....	1250	Northerly part of lot.
9013 D. of M.		5 Sept'r, 1879	13 Sept'r, 1879	J. H. Sample	.....	200	Description indefinite.
8762 Mort.		21 July, 1879	28 July, 1879	F. C. Mercer	.....	470	As described in Div. No. 9407.
9465 Agreement.		17 Nov'r, 1879	21 Nov'r, 1879	W. G. Fonseca	.....	500	do.
Part D. of M.		9 Feb'y, 1880	16 Feb'y, 1880	E. Cowland	.....	500	do.
9906 do.		do.	do.	Eliza Mercer	.....	300	do.
9907 B. & S.		do.	do.	F. C. Mercer	.....	300	do.
9908 Mort.		do.	do.	R. B. Watson	.....	300	do.
10008 Mort.		1 March, 1880	2 March, 1880	The Mayor & Council	.....	300	do.
10045 Mort.		8 March, 1880	9 March, 1880	H. & J. R. Sutherland	.....	300	do.
10046 B. & S.		26 Feb'y, 1880	9 March, 1880	R. B. Watson	.....	800	do.
10147 D. of M.		25 Mch, 1880	25 Mch, 1880	Nellie Pritchard	.....	300	do.
10148 A. of M.		do.	do.	R. B. Watson	.....	300	do.
10107 Patent.		5 Dec'r, 1879	19 Mch, 1880	Geo. Winks	.....	300	Refers to No. 10008.
4064 D. of M.		29 June, 1876	3 July, 1876	W. G. Fonseca	.....	300	do.
11796 B. & S.		8 Nov'r, 1880	11 Nov'r, 1880	Wm. Logan	.....	200	do.
23792 Lis Pendens.		12 Jan'y, 1882	13 Jan'y, 1882	C. H. Patterson	.....	6000	Refers to No. 2884.
26214 B. & S.		31 Jan'y, 1882	20 Feb'y, 1882	John C. Schultz	.....	6000	Part of lot.
31869 Lease.		3 Aug't, 1882	12 Aug't, 1882	Eliza Mercer	.....	6000	Part of lot.
31870 Lease.		3 Aug't, 1882	12 Aug't, 1882	Thos. Ryan	.....	6000	do.
10484 Lis Pendens.		10 May, 1880	11 May, 1880	Thos. Ryan	.....	6000	Part of lot.
33133 B. & S.		9 Oct'r, 1882	18 Oct'r, 1882	W. G. Fonseca et al.	.....	6000	do.
33219 Lis Pendens.		23 Oct'r, 1882	23 Oct'r, 1882	Eliza Mercer	.....	6000	Part of lot.
36797 Mort.		4 April, 1883	2 May, 1883	Fonseca et al.	.....	6000	All.
				The M. T. Ass'n.	.....	6000	Part of lot.

JOHN W. KENNEDY, Dep. Registrar.

EXHIBIT D.

To the Honorable
The Minister of the Interior,
Ottawa.

The petition of the undersigned respectfully sheweth that prior to and on the fifteenth day of July, A. D. 1870, he was by himself and through his servants, tenants, and agents in actual peaceable possession of a portion of lot number thirty-five (35) in the Parish of St. John according to the Dominion survey of river lots, to wit: the southern ten chains of said lot commencing in the rear of the land or lot No. 11, owned by the late Neil McDonald, and thence running back the usual distance to the two mile limit, and therefore prays that letters patent thereof may issue to him for the same. 10

And your petitioner as in duty bound will ever pray.

(Signed,)

WM. G. FONSECA.

Dated this 26th day of July, A. D. 1877.

EXHIBIT E.

Letter dated 3rd Oct., 1878, from W. G. Fonseca to J. S. Dennis.
See copy of this Exhibit at pages 14 and 15.

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EXHIBIT F.

The *Times* Printing House,
Main street, opposite City Hall,
Charles R. Tuttle, Editor and General Manager.

WINNIPEG, May 22nd, 1879.

Col. DENNIS,
Deputy-Minister of the Interior.

DEAR SIR,

* * * * *

Mr. Bannatyne told me the other day that in a conversation with you he plainly stated that had I not been ahead of him in surveys, staking and improvements he

would have persisted in demanding a patent for that portion of 35 I now occupy, and that you agreed with him that I was entitled to my patent. I also so understood you when reference was made to the subject during our drive. Of course I do not wish to interfere with those who have settled on certain portions of my claim, but expect to have that made good.

* * * * *

EXHIBIT G.

DEPARTMENT OF THE INTERIOR,
DOMINION LANDS OFFICE,
OTTAWA, 3rd February, 1879.

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MEMORANDUM.

In the matter of the claim preferred by Mr. W. G. Fonseca, for a grant to him under the Manitoba Act, of a certain portion of the Point Douglas Common, the undersigned has the honor to report that the Deputy Minister of Justice has, on the evidences submitted to him, approved the recognition of the claim, but gives the opinion that the extent of land to be granted is a matter for the decision of the Right Hon. the Minister of this Department.

In common with others making similar claims, Mr. Fonseca, applies for the full depth of the "inner two mile" belt remaining in rear of the Neil McDonald property, and a width throughout of ten chains from the outline of the River lot next adjoining to the westward.

It is to be observed that the Point Douglas Common lot was not surveyed either by the Hudson's Bay Company, or subsequently by the Dominion Lands.

Under these circumstances the possession of Mr. Fonseca, under the Manitoba Act, could not be affirmed to include any greater extent than his own actual enclosures, and did not therefore carry with it the occupation of any definite one of a system of lots.

If therefore anything beyond the ground actually enclosed by him be granted to Mr. Fonseca, such concession will be purely an act of grace on the part of the Minister, and, in view of the relatively great value of the land in question, the undersigned is of the opinion that Mr. Fonseca, would be most liberally treated were he given such additional area to that he actually occupied, as would make the whole 25 acres.

As it will be advisable in public interest to recognize the private surveys which have been registered in the Registry Office at Winnipeg, subdividing certain portions

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of the Common into building lots, and laying out streets thereon, and furthermore that already, action has been taken upon them by the Department, in giving patents to individuals who bought building lots from the Trustees for the Point Holders, therefore it would be well that the grant to Mr. Fonseca should be described to conform to the outline of certain streets, to include certain blocks so laid out, and in doing this it may be necessary to depart slightly in defect or in excess from the area of 25 acres above specified.

It should be borne in mind, in estimating the consideration that Mr. Fonseca, would so receive that it is but comparatively lately that he has preferred claim on the present basis; that he had with others for a long time, advanced an antagonistic claim to this same piece of ground as one of the original Point Holders, and therefore, necessarily, has himself, to a certain extent, weakened the force of the claim for consideration which he now advances. 10

The information in this office is not yet sufficiently detailed and completed to enable the undersigned to know what parts of the Common, covered by this claim have already been disposed of to other parties, either by Mr. Fonseca, acting for himself alone, and receiving the equivalent therefor, or by the trustees of the Point Holders. In the latter case a proportionate additional extent in the rear would require to be added to make up for any such lands sold, for which Mr. Fonseca received no equivalent.

Respectfully submitted.

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LINDSAY RUSSELL,
Surveyor-General.

The facts are as stated by the Surveyor-General, and the conclusions arrived at by him are recommended to the favorable consideration of the Minister.

(Signed), J. S. DENNIS,
Deputy Minister.

Approved.
(Signed) J. A. McD.

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EXHIBIT H.

In the matter of the application of Alexander J. Belch, of the City of Winnipeg in the Province of Manitoba, for the issue of letters patent to him of parts of lots lettered C, F and G, in the City of Winnipeg in the Province of Manitoba, under the Act 33 Vict., cap. 3, sec. 32 and amendments thereto, such portions being the southerly

40 feet of lots C and F, and 66 feet on Austin street by 70 feet in depth of lot G, being that part not conveyed by Barber to Kew.

I, William Gomez Fonseca, of the said City of Winnipeg in the Province of Manitoba, Real Estate Agent, do solemnly declare,

1. That I have known the lands the subject of this application during the past ten years.

2. That one William Logan was in occupation of the said portions of lots letters C and F, in the year of our Lord 1870, and the same has been since occupied by him and those claiming under him.

3. That that part of lot lettered G, described above was in the occupation of 10 Edmund L. Barber, prior to the fifteenth day of July, in the year of our Lord 1870, and the same has been since continuously resided upon and occupied by him and those claiming under him.

4. That the Trustees of Point Douglas Common do not claim any rights in or to the said lands, but acknowledge the title of those claiming through the said Logan and Barber respectively.

5. I do not know of any claim to the said lands adverse to that of the above named Alexander J. Belch, except a claim of my own which I release and forego as to the said portions of lots.

And I make this solemn declaration conscientiously believing the same to be true, 20 and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign intituled, "An Act for the Suppression of Voluntary and Extra Judicial Oaths."

(Signed,)

WM. GOMEZ FONSECA.

Declared at Winnipeg, this 5th day of July, 1879, before me

(Signed,)

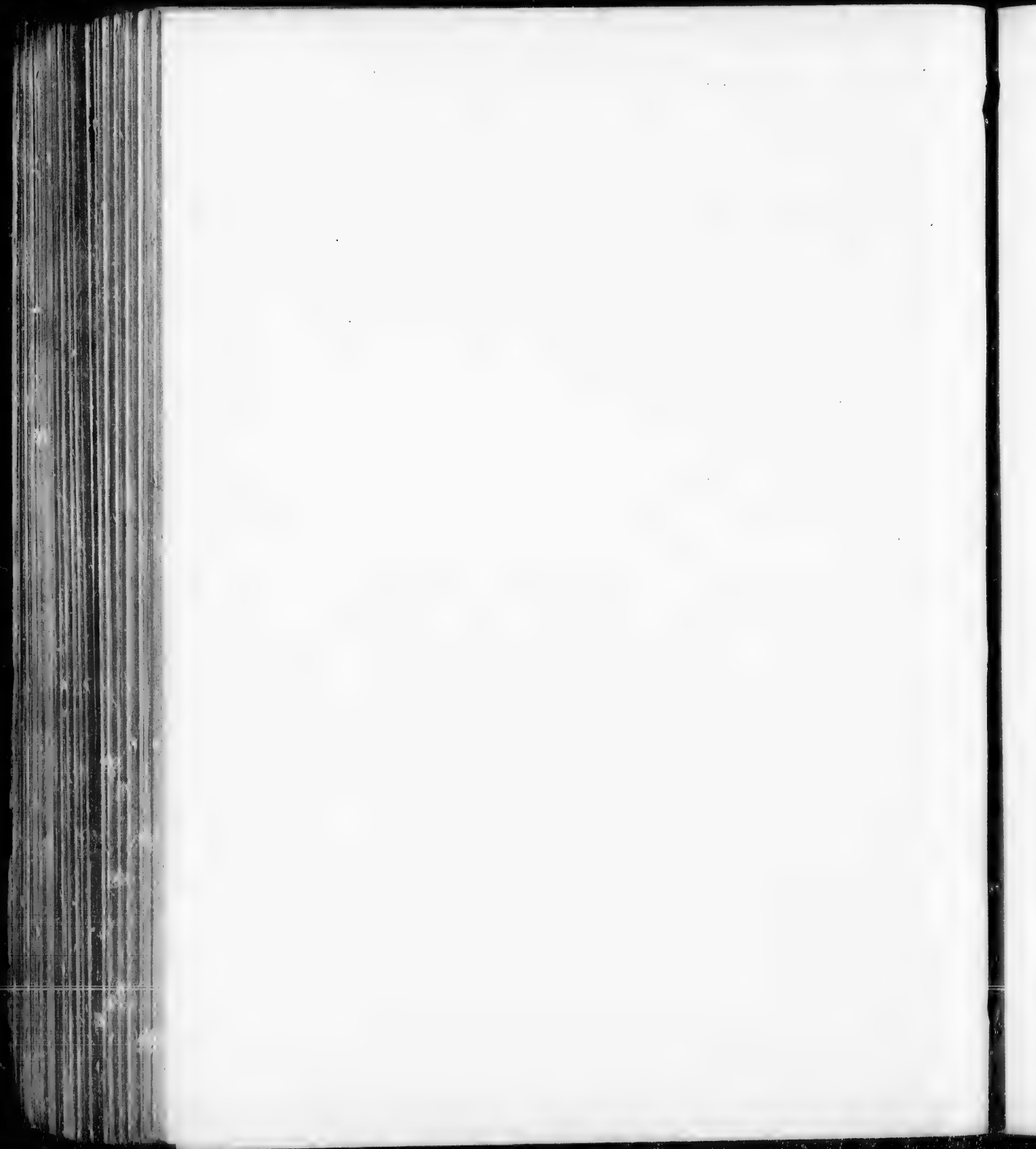
W. N. KENNEDY,

A Commissioner, etc., B. R.

EXHIBIT J.

Winnipeg, Manitoba, 5th July, 1880.

SIR—Referring to the patent lately issued to me for lots in the Point Douglas Com- 30 mon, I beg to call your attention to the fact that certain lots shewn in the registry abstract herewith appended were included in the grant to me. This was obviously done in error which was probably caused by the abstracts before sent down shewing for these lots Fonseca et al which was calculated to leave the impression that they



had been conveyed by myself and wife. In the abstract appended it will be seen that it arose from my name happening to be the first among the trustees who signed, and as they were received by the parties in good faith it would be an injustice to them for me to retain them. I have then respectfully to propose that I shall either grant back to the Government or the parties themselves the lots in question and that the Government shall grant me in lieu thereof other lots of equal size, the following being respectfully suggested:

Lots Nos. 4, 5, 6 and 7 in block 16.					} John Johnston's survey west of Main Street.	10
"	"	1 and 2	"	H.		
"	"	1, 2, 3 and 4	"	I.		

and the east half of lot number ten in block two according to Duncan Sinclair's survey of Main Street.

I have the honor to be, Sir,

Your obedient servant,

W. G. FONSECA.

To the Surveyor General of
Dominion Lands, Ottawa.

REPORT ON LOGAN'S CLAIM BY R. LANG.

Ref. M. A. 3740.

DEPARTMENT OF THE INTERIOR,
Ottawa, 13th Sept., 1883.

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MEMO.

[Reclaim of Wm. Logan to part lot 35 St. John.]

The land referred to herein was patented to W. G. Fonseca as part of his claim under the Manitoba Act on 5th Dec., 1879. It was known in the Department at that time that there were others who had squatted upon the land patented to Fonseca, but Fonseca's claim was considered to be the one which should prevail over all the others.

(Signed),

R. LANG.

LETTER FROM SURVEYOR-GENERAL, 7TH JULY, 1881.
OFFICE OF DOMINION LANDS.

DEPARTMENT OF THE INTERIOR,
July 7th, 1881.

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GENTLEMEN--In the matter of the application by you on behalf of Mr. Belch for patent for parts of lots C, F and G, Point Douglas, Winnipeg, I regret to find on

looking through the evidences that they fail to establish any title under the Manitoba Act on the part of Mr. Belch's assignors. Three affidavits are filed, one from Mr. Belch (whose personal knowledge of events in that locality at the date of the transfer, not being such as to enable him to know anything about the occupation of the land) does not touch upon the all important point. Next one from Mr. William Fonseca stating that "Logan was in occupation of the said portions of lots C and F in the year of our Lord 1870," leaving indefinite and unestablished what kind of occupation Logan's might have been.

Further on he affirms "that part of lot "G" was in the occupation of Edmund L. Barber prior to the 15th July, 1870, and that the same has since been continuously resided upon and occupied by him and those claiming under him." On this clause of Mr. Fonseca's affidavit I would observe that the affirmation of date is in the form of an interlineation or correction of the affidavit not initialed by Mr. Fonseca. The same remark applies to the affirmation "resided upon." 10

The third affidavit that of Alexander Logan affirms that lots C, F and G were occupied by one William Logan prior to the 15th July, 1870, and "ever since occupied by him and those claiming under him." Here the nature of the occupation by Logan is undefined. Also in the absence of anything to explain how Logan occupied in 1870 the part of lot G concerned, and that Barber also occupied the same part of that lot at the same time there would appear to be confliction between Logan's and Fonseca's affidavits. Under the circumstances that the evidences filed where they are to the point are informal and that when they are in proper form they are either not to the point or clash with each other. I could not consistently with my duty report the case to the Minister as one in fit shape for decision as to the right of the claimants. 20

I have to request that if you can furnish more complete evidence in support of the claim preferred by your client that you should do so as speedily as possible.

I have, etc.,

Surveyor General.

MESSRS. ARCHIBALD & HOWELL,

Barristers, Winnipeg.

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EXHIBIT L.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council, on the 10th May, 1877.

On a memorandum, dated 7th May, 1877, from the Honorable the Minister of the Interior, reporting with respect to certain claims for patent of an exceptional charac-

ter, which have been preferred to two several tracts of land in Manitoba, known respectively as the Point Douglas and St. Boniface Commons.

That the subject of these claims was last brought to the notice of Council by the Minister of the Interior on the 3rd April, 1874, on whose report an order passed on the 17th of that month referring the same to a Commission to be composed of the three Judges of the Queen's Bench in the Province.

That this course was taken upon the recommendation of His Honor Lieutenant-Governor Morris, who had been previously requested under the authority of Council to take steps to ascertain and report on the rights of Common and of cutting hay claimed by settlers.

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That no effect, however, has been given to the above course, it having been thought expedient to defer the issue of the proposed Commission to the Judges; and that he, the Minister, having been placed in full possession of the facts and of all the evidence on which the claims to the respective tracts of land are based, has taken on himself the duty of investigating the said claims; the result of which investigation he submits in his said annexed report.

The Committee concur in the said report and advise that the suggestions therein submitted be adopted, and that the Order in Council of the 17th April, 1874, alluded to above, be rescinded as therein recommended.

Certified,

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(Signed,)

W. A. HIMSWORTH.

Clerk, Privy Council.

To the Honorable

The Minister of the Interior,

&c., &c., &c.

EXHIBIT M.

DEPARTMENT OF THE INTERIOR.

OTTAWA, 7th May, 1877. 30

MEMORANDUM.

The undersigned has the honor to report to Council on certain claims for patent, of an exceptional character, which have been preferred to two several tracts of land in Manitoba, known respectively as the Point Douglas and St. Boniface Commons.

The subject of these claims was last brought to the notice of Council by the Minister of the Interior, on the 3rd April, 1874, on whose report an Order passed on the

17th of that month, referring the same to a Commission to be composed of the three Judges of the Queen's Bench in the Province.

This course was taken upon the recommendation of His Honor Lieut.-Governor Morris, who had been previously requested, under the authority of Council, to take steps to ascertain and report on the rights of Common and of cutting hay claimed by settlers. No effect, however, has been given to the above course, it having been thought expedient to defer the issue of the proposed Commission to the Judges, and the undersigned having been placed in full possession of the facts and of all the evidence on which the claims to the respective tracts of land are based, has taken on himself the duty of investigating the said claims, the result of which investigation he 10 submits herewith.

Should Council approve of the conclusions arrived at by him as hereinafter set forth, he recommends that the Order in Council of the 17th April, 1874, alluded to above, be rescinded.

He proposes to report on the two claims separately.

POINT DOUGLAS COMMON.

The land claimed consists of lot No 35, Dominion Land Surveys, or No. 244 according to the Hudson's Bay Company's Survey and Registry Book, situate formerly in the Parish of St. John, now included within the limits of the City of Winnipeg, and contains $667\frac{2}{10}$ acres. Its precise boundaries are indicated on the diagram A 20 herewith, which also shews its position in relation to the small holdings embracing the frontage of the Red River on Point Douglas, owned severally by the applicants, by virtue of which ownership they claim the land in question, as tenants in common.

The claimants apply for a patent for this land, and support their application by certain allegations as follows:—

1. That the late Lord Selkirk, at or about the time he founded the Red River Settlement, laid out the river lots on Point Douglas and gave the same to certain of his servants or retainers, marking off the large tract in rear to be held as a Common by and for the benefit of the Point owners. Two of the claimants have stated their belief that Lord Selkirk actually conveyed this land to the settlers at the same time 30 that he granted them the small lots.
2. That they have always asserted their claim thereto, and have, with a slight interruption, enjoyed the continuous and exclusive right of hay and Common over the same, and that the latter right has always been recognized in the surrounding community.
3. That the right so claimed and enjoyed by them is superior in all respects to that conceded by the law of the Assiniboia Council to the owners of river lots between the two mile and the four mile lines.



4. That the Government having recognized the hay and Common right claimed in the outer two miles, as above, to be of such character as to justify the commutation of the same by an absolute grant of the land therein to the respective owners of lots fronting on the river, they, the applicants, should be dealt with not less favorably, that is to say, by an actual grant of the land embraced in the lots lying in rear of the Point lots.

5. They further claim a patent for the land under the provisions of the Act 38 Vic., cap. 52, by which was enacted that persons satisfactorily establishing undisturbed occupancy of any lands within the Province prior to and being by themselves, "or their servants, tenants or agents or those through whom they claim, in actual peaceable possession thereof on the 15th day of July, 1870, shall be entitled to receive Letters Patent therefor, granting the same absolutely to them respectively in fee simple." 10

On an attentive perusal of all the evidence adduced, and the voluminous papers in the case, it appears to the undersigned:

1. It may be conceded that the claimants had for many years previous to the transfer enjoyed a right of Common and of Cutting Hay over the land, but the enjoyment of such right can only be regarded as having been exclusive in the same light as the Hay and Common Right in the Outer Two Miles, enjoyed by the settlers on farm lots in the Old Parishes, was exclusive. 20

Respecting the belief expressed by two of the claimants that an actual grant of the land included in the Common was made at the time by Lord Selkirk to the Point holders, there is no evidence whatever in support thereof, and the circumstances, altogether, connected with the claim, render it even more than doubtful that such was the case.

2. As regards the right of the claimants to a patent under the Act 38 Vic., cap. 52, it is clear to the undersigned that the "undisturbed occupancy" and "actual peaceable possession" of the Common, either at the time of, or previous to the transfer, by the Point holders, was not of the character contemplated by the statute, and therefore not such as would entitle the claimants to a grant of the land. The nature of the right enjoyed in the Common by the Point holders may be considered as somewhat analogous to that claimed in the Outer Two Miles in the Old Parishes, although it must be remembered that the latter was provided for by an Ordinance of the Council of Assiniboia, whereas there was not only no such authority to the claim to the Common, but the papers shew that on the Point holders applying to the Council on a certain occasion for protection against people trespassing by cutting hay thereon, they were referred to the Governor of the Hudson's Bay Company, the natural inference of which is that the Council, which was the highest authority in 30



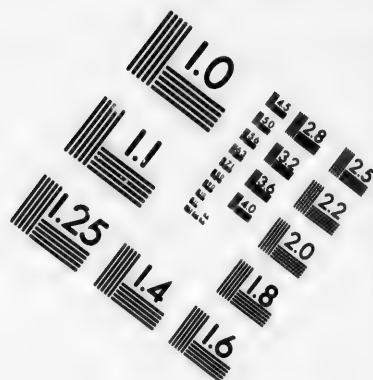
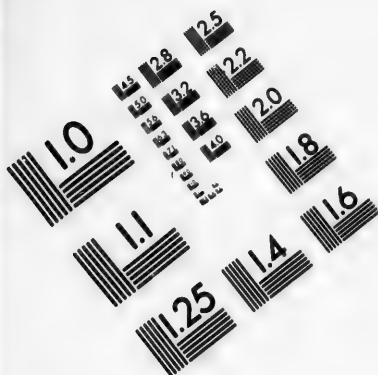
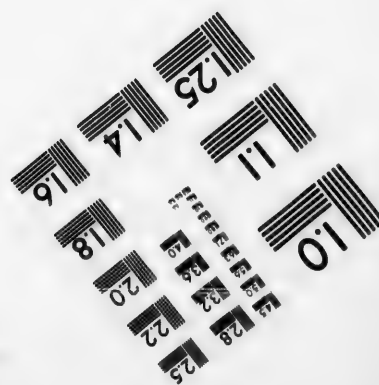
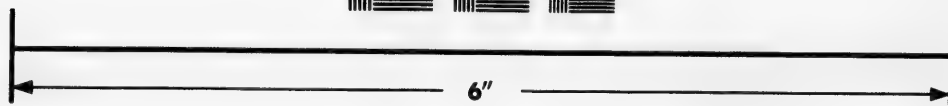
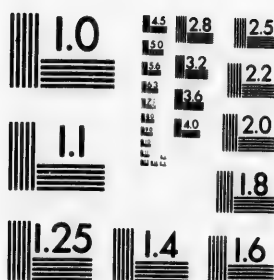


IMAGE EVALUATION TEST TARGET (MT-3)



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the settlement, considered the Company as possessing the title to the land. This occurred in the year 1862.

The statement that the Common, as now claimed, was set apart by Lord Selkirk and intended by him for the exclusive use and benefit of the Point holders, is not borne out by the facts; on the contrary, the original plan of survey embracing the Point Lots (see tracing B herewith) shews the land south of Lot 249, being the northerly limit of the present Common and between it and Fort Garry, to have been embraced in one immense lot or tract, numbered 277, and it was not until many years after Lord Selkirk left the country that this lot was subdivided into smaller parcels by the Hudson's Bay Company which then represented Lord Selkirk in the country. 10

The undersigned is of opinion that the claimants were, at the time of, and previous to the transfer, in the enjoyment of a right of Common and of Cutting Hay over the land in question, and generally in the Province, the ascertaining and adjusting of which is provided for in the Act 33 Vic., cap. 3, and that the same should be commuted "by a grant of land from the Crown."

He is of opinion, however, that the applicants are unreasonable in their demands.

The commutation of the Hay and Common Rights in the Province already effected by the Government, and which has been based upon an acreage allowance of land or scrip, has been conceded to be of the most liberal character. The claimants in the parishes in which the right was protected by the Council of Assiniboia have been 20 satisfied by a grant of the land, acre for acre, where practicable, in the Outer Two Miles in rear of the respective river holdings. In all other parts of the Province the right has been commuted by a grant of scrip, in no case exceeding the rate of one dollar and a half of scrip for each acre of land to which the applicant may prove his right under the Manitoba Act.

The question now to be considered is what would be a fair and reasonable commutation of this right on the part of the Point holders. They may, upon the whole, have somewhat more claim to consideration than either of the classes whose rights have been commuted by land or scrip respectively as above, in view of the fact of the land in question being now situate within the limits of Winnipeg, and therefore 30 possessing special value. On the other hand it must be remembered that such rights as they may possess have only been acquired by "User" and to the extent shown in the papers, there being no proof whatever, beyond the mere statements severally made by the applicants, of any title or even of any special right to the Common having been conferred upon them either by Lord Selkirk, the Hudson's Bay Company, or the Council of Assiniboia.

Upon a full and earnest consideration of all the circumstances, the undersigned is of opinion that the applicants would be fairly, indeed liberally, dealt with were they to receive, in commutation of their rights, a grant of acre for acre, out

of that part of the common next toward the river, which is the most valuable part of the property.

The total acreage of the small holdings, embracing the point, is 226.07 acres.

The undersigned recommends that a patent for an equal quantity issue to such persons as may be indicated, with that view, by the claimants, in trust for the benefit of the several owners of the Point lots.

The land so patented should be bounded, next to the river, by the rear of the lots as originally laid out, (the lot owned by the family of the late Neil McDonald to be considered as one of such lots,) but not to be held to include any land for which a right to a patent may be established under the Manitoba Act or the Act 38 Vic, cap. 10 52, on the said property.

It should be understood further that the Government is to be entirely relieved from any trouble or responsibility connected with division of the grant among the claimants, and, finally, the patent not to issue to the trustees until the written consent to such step shall have been filed in the Dominion Lands Office, of the several parties to whom the Point holders or any of them may have sold lots on the Common.

ST. BONIFACE COMMON.

Lot 82, in the Parish of St. Boniface, or No. 754, according to the Hudson's Bay Company Register, known as the St. Boniface Common, is claimed under somewhat similar circumstances, and the undersigned recommends that the claim should be dis- 20 posed of in a similar manner.

In this case the common only contains 118 acres, while the aggregate area of the small lots on the river, represented by the claimants, is 1141 acres.

Were the common to be divided, pro-rata, therefore, according to acreage, the proportion of the grant would be as one is to one-tenth, nearly.

The claimants, however, have joined in an agreement that the land, if given by the Government, shall be divided, share and share alike, among them, that is to say, as there are twenty claimants, each share will be $5\frac{9}{10}$ acres, and they state that they will be perfectly satisfied with such an arrangement, and have further joined in request that the patent may issue to Archbishop Tachè, in trust for the severa 30 owners.

The undersigned recommends that the patent issue accordingly for their land to Archbishop Tachè in trust for the claimants, in the same manner as suggested in connection with the settlement of the claims preferred to the Point Douglas Common, the

Government to be similarly relieved from any and all responsibility respecting the final division of the land among the persons entitled.

All of which is respectfully submitted.

(Signed,)

DAVID MILLS,
Minister of the Interior.

Certified to be a true copy of the original.

A. M. BURGESS,
Deputy Minister of the Interior.

Ottawa, July 7, 1886.

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EXHIBIT N.

Same as Exhibit 20 at page 255.

EXHIBIT O.

CANADA.

Deputy-Governor.

Victoria, by the Grace of God, of the United
Kingdom of Great Britain and Ireland, Queen, 20
Defender of the Faith, &c., &c., &c.

To all to whom these Presents shall come—Greeting :



Registered in the Department of the Interior
 the 188
 Folio
 Registrar of Dominion Lands Patents

Whereas the Lands, hereinafter described, are part of the lands known as "Dominion Lands," and mentioned in an Act of the Parliament of Canada, passed in the forty-sixth year of Our Reign and known as the "Dominion Lands Act, 1883."

And Whereas

he applied for a grant of the said lands and claim to such grant having been duly investigated by Us he has been found duly entitled thereto.

Now Know Ye, that by these Presents We do grant, convey and assure, unto the said

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and assigns forever, all the Parcel or Tract of Land, situate, lying and being in the

in Our Dominion of Canada, and being composed of

in the said Province, dated 1st January, 1875, signed by John Stoughton Dennis, Surveyor-General of Dominion Lands, and of record in that Branch of the Department of the Interior known as the Dominion Lands Office, containing by admeasurement

acre, more or less.

To have and to hold the said Parcel or Tract of Land, unto the said

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and assigns, for ever; saving and reserving, nevertheless, unto Us, Our Successors and Assigns, the free uses, passage and enjoyment of,

in, over and upon all navigable waters that now are or may be hereafter found on or under, or flowing through or upon any part of the said Parcel or Tract of Land; also reserving thereout all "travelled roads" crossing the same, existing as such on the 15th day of July, 1870, which by and under the laws of Assiniboia, were or may be held to be legally Public Highways; and further reserving thereout the right for any person or persons at any time or times to land, in connection with purposes of navigation of the

River, upon the slope of the river bank of the lands hereby granted, from any vessel, barge, boat or other craft while navigating the said river, or whilst using the waters of the same for purposes of navigation, and to plant on such slope of the river bank aforesaid any post or posts for attaching thereto any such vessel, barge, boat or other craft engaged as aforesaid.

Given under the Great Seal of Canada:—Witness,

Deputy of Our Right Trusty and Entirely Beloved Cousin, the Most Honourable Henry Charles Keith Petty Fitzmaurice, Marquess of Lansdowne, in the County of Somerset, Earl of Wycombe, of Chipping Wycombe, in the County of Bucks, Viscount Calne and Calnstone, in the County of Wilts, and Lord Wycombe, Baron of Chipping Wycombe, in the County of Bucks, in the peerage of Great Britain; Earl of Kerry

and Earl of Shelburne, Viscount Clanmaurice and Fitzmaurice, Baron of Kerry, Lixnaw and Dunkerron, in the peerage of Ireland; Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George; Governor-General of Canada, and Vice-Admiral of the same &c., &c., &c.

At Ottawa, this _____ day of _____
in the year of Our Lord, one thousand eight hundred and eighty- _____ and in
the forty- _____ year of Our Reign

Ref. No. }
Grant No. } By Command,

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Under Secretary of State. Deputy of the Minister of the Interior.

BILL OF COMPLAINT IN MERCER VS. FONSECA.

IN THE QUEEN'S BENCH
IN EQUITY.

Between ELIZA MERCER,
Plaintiff.

and

WILLIAM GOMEZ FONSECA, and JOHN CHRISTIAN SCHULTZ and HER MAJESTY'S 20
ATTORNEY-GENERAL FOR CANADA,

Defendants.

MANITOBA,
CITY OF WINNIPEG, } To the Honourable the Judges of the Court of Queen's
TO WIT: } Bench in Equity

The Amended Bill of Complaint of Eliza Mercer, wife of Frederick C. Mercer, of the City of Winnipeg, in the County of Selkirk, sheweth as follows:

(1) Prior to the transfer of the territory now constituting the Province of Manitoba to the Dominion of Canada, the defendant, William Gomez Fonseca, was in possession of a small portion of land containing about two acres, now forming part of the eastern end of what is now known as Lot Thirty-five (35) of the Dominion Government Survey of the Parish of St. John. 30

(2) The said two acres abutted upon a large tract of land then known as the Point Douglas Common, which had never been subdivided by the Hudson Bay Company, and

with the exception of certain portions then in the occupation of certain persons claiming title thereto, was used by those persons who had settled near to said Common and upon the land known as Point Douglas as a common for their cattle to graze upon, and such persons were known as the Point Douglas holders.

(3) After the said transfer the said Point Douglas holders associated themselves together for the purpose of asserting title in themselves in fee simple in the said Common, caused a portion of the same to be surveyed into town lots, sold many of such lots, recognized the titles of those persons in possession as aforesaid, and having constituted the defendants and others trustees for all applied to the Crown for a grant of Letters Patent for all the said Common in favor of the said trustees.

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(4) The Crown refused to recognize the validity of such claim, and offered to grant to each of the said Point Douglas holders portions of the said Common equal in size to the land then held by each upon the said Point.

(5) After long delay and negotiation and no agreement having been arrived at, the defendant, Fonseca, conceived the idea of claiming for himself and as against all the others of the Point Douglas holders a large tract of the said Common, namely, the southerly ten (10) chains of said Lot thirty-five (35) Dominion Government Survey, with a depth of two miles, basing his claim upon the fact of his occupancy of a portion of the eastern end of said Lot thirty-five (35) and the customary shape of farm lots.

(6) In pursuance of the said idea the defendant, Fonseca, in the month of July, 20 1877, presented his petition to the Honourable the Minister of the Interior, alleging that prior to and on the fifteenth day of July, 1870, he was by himself and through his servants, tenants and agents in actual peaceable possession of the said southerly ten (10) chains of said Lot Number thirty-five (35), commencing in rear of the land on Lot Number eleven (11) owned by the late Neil McDonald, thence running back the usual distance to the two mile limit, and praying in consequence of such possession that Letters Patent for the whole of such land might be issued to him.

(7) Prior to the said transfer and at the date thereof, one William Logan, who was one of the said Point Douglas holders in respect of his ownership of the lot of land on Red River known as the Huppe Lot, and afterwards as Lot 30 Number twenty-four (24) of the Dominion Government Survey of the Parish of St. John, as one of the persons interested in said Point Douglas Common, had taken possession of and was then in the actual peaceable and undisturbed possession of a portion of said southerly ten (10) chains of said Lot thirty-five (35), which portion may now be more familiarly known and described as follows, that is to say, Lots C. D. E. and F. in Block Number fourteen (14) on the east side of Main Street, according to the official plan of the City of Winnipeg, made by George McPhillips, D. L. S., and filed in the Registry Office in and for the County of Selkirk.

(8) Being in possession as aforesaid the said William Logan by indenture of bargain

and sale, bearing date the seventh day of December, one thousand eight hundred and seventy-five, granted and conveyed the said Lots D. and E. in the preceding paragraph described to one David Henry Thomas, his heirs and assigns, for valuable consideration therein mentioned, which deed was registered in the Registry Office for the County of Selkirk on the twenty-third day of March, one thousand eight hundred and seventy-six, and the plaintiff, Eliza Mercer, claims title to two parcels of land parts of said Lots D. and E., described as follows: first, a portion of said Lot D. having a frontage of ninety-two feet on Main Street, and running back along Fonseca Street the same width to a depth of one hundred and sixty-five feet.

Second, a portion of said Lot E. having a frontage of ninety-two feet on Austin 10 Street, and running back along Fonseca Street the same width to a depth of one hundred and thirty-two feet more or less, through said Logan and Thomas, by virtue of successive conveyances of the same in fee simple, which have all been registered in said Registry Office, that is to say, a deed from David H. Thomas to one Frederick C. Mercer, dated the nineteenth day of June, 1876, registered the twentieth day of June, A. D. 1876; a deed from said David H. Thomas to said William Logan, dated the twenty-second day of March, A. D. 1876, registered the twenty-third day of March, A. D. 1876; a deed from said William Logan to said Frederick C. Mercer, dated the twentieth day of June, 1876, registered the twenty-fourth day of June, A. D. 1876; a deed from said Frederick C. Mercer to Robert Gunn, dated the twenty-ninth day of June, A. D. 20 1876, registered the same day; a deed from said Robert Gunn to the plaintiff, dated the seventh day of March, A. D. 1879, registered the twenty-ninth day of March, A. D. 1879; a deed from the said Frederick C. Mercer to one Charles Herbert Pattison, dated the eighth day of November, registered the eleventh day of November, 1880; of a portion of said lands a deed from the said Charles Herbert Pattison to the plaintiff, dated the thirty-first day of January, 1882, registered the twentieth day of February, 1882, a deed from said Frederick C. Mercer to your complainant, dated the ninth day of October, 1882, registered the eighteenth day of October, 1882, of the remaining portion of said lands claimed by the plaintiff.

(9) The actual peaceable and undisturbed possession of the said parcels claimed by 30 the plaintiff has always accompanied the said title until the wrongful acts of the defendants hereinafter mentioned, and from the date first mentioned till very recently the portions of said lots owned by your complainant have always been in the actual peaceable and undisturbed possession of her and those through whom she claims as aforesaid.

(10) The said William Logan being interested as aforesaid in said Point Douglas Common in the year 1868 staked out a block of land on the east side of Main street, including said Lots C. D. E. and F., and the lands now claimed by the plaintiff, and claimed the said block so staked out by him as his land. In the next year said Logan ploughed round the said block of land, and in or about the month of August, 1869,

he dug a cellar on said block of land as a preparation for building a house thereon and in the autumn of the same year he put the building materials on said ground for his intended dwelling house, and in the spring of the year 1870 said Logan built his said house on said block of land, and said house was completed and a quantity of additional building materials placed on said grounds for an addition to said house all before the said transfer on the fifteenth July, 1870, and said Logan has resided in said house and in another built by him on the same land ever since until very recently, and still retains possession thereof.

(A) The said the Department of Interior during the pendency of the said petition of the defendant, Fonseca, required him to file a statement showing what persons 10 were entitled by possession or otherwise to any portions of the lands for which he was seeking to procure a patent, and in response thereto the defendant Fonseca filed with the said Department a memorandum of such persons, among the rest mentioning that the said William Logan was the owner of said Lots C, D, and E, and stating that he, the defendant Fonseca, did not wish to interfere with the claims of any such persons, which memorandum bears date the third day of October, 1878.

(B) One Alexander J. Belch, in the month of July, A.D. 1879, made an application for a patent for portions of said Lots C. and F., basing his claim upon the title of said Logan, and in support thereof the defendant Fonseca made a solemn declaration that said William Logan had been in occupation of said Lots C. and F. since the year 1870, 20 and that the said lots had since been occupied by him and those claiming under him, also stating that the trustees of the Point Douglas Common, of whom he was one, did not claim any rights in or to the said land, but acknowledged the title of those claiming through said Logan.

(C) Sometime thereafter the matter of the said petition of said defendant Fonseca, was referred by the Department of the Interior to the Surveyor-General, for his investigation and report and that official made his report in writing bearing date the third day of February, 1879.

(D) In said report it is pointed out that as the said Common had never been 30 surveyed by the Hudson's Bay Company or the Dominion Government, the possessions of the defendant Fonseca "could not be" affirmed to include any greater extent than his own actual inclosures and did not therefore carry with it the occupation of any definite one of a system of lots that the defendant Fonseca, had originally made a claim antagonistic to the claim now made as one of the associated Point Douglas holders as aforesaid and that if any grant were made to him of land other than that within his own enclosures it would be by reason by the Grace of the Crown and not because he had any right thereto and it was by the said report suggested that if land were granted to the defendant Fonseca, who with that enclosed by him, would make in all twenty-five acres he would be liberally dealt with and such facts as stated in said report are true.

(E) The said report was recommended by the Deputy Minister of the Interior to favorable consideration of the Honorable the Minister of the Interior and was by him approved and adopted and the Crown thereby determined to act thereon and to make a grant from the Crown in accordance therewith.

(F) After much delay having occurred and the selection of such additional lands being of much consequence the defendant Fonseca, applied to the defendant Schultz, who was a member of the Dominion House of Commons, for the assistance of his influence and by memorandum in writing bearing date the twelfth day of November, 1879, and it was agreed between the defendants, that in case a patent for any portion of the Common was granted under the said application and petition to the defendant Fonseca, 10 he the defendant Fonseca, would convey one-half thereof to the defendant Schultz.

(G) Shortly thereafter and on the fifth day of December, 1879, a patent issued to the defendant Fonseca, for a large number of lots and among others the said lots D and E.

(H) Shortly thereafter the defendant Fonseca, pointed out to the said the Department of the Interior, that a number of the lots embraced in the said patent were the property of persons other than himself and that he had no right thereto and he offered to convey such lots to such persons and required that a similar number of lots should be granted to him by the Crown, which request was granted and a further patent issued to the defendant Fonseca, for such further lots. 20

(I) The defendant Fonseca, did not include said lots D and E, in his said representation so sent to the Department and he and the defendant Schultz, now claim to be entitled thereto by virtue of the said patent and agreement.

(J) It was not the intention of the said Department to grant to the defendant Fonseca, any lots claimed by or in the possession of other persons as aforesaid and it was through error and inadvertence that said lots D and E, were included in the said patent.

(K) The plaintiff had not nor had any person through whom she claims as aforesaid, any notice or knowledge of any application of the defendant Fonseca, for a patent for said lots D and E, or any intention on the part of the Crown, to grant such a patent 30 and had no opportunity of presenting evidence of her claim, if any evidence were necessary after the admission aforesaid of the defendant Fonseca and the said patent, was granted without any notice to or knowledge of the plaintiff or those through whom she claims as aforesaid and through improvidence and error as aforesaid.

(11) The defendant William Gomez Fonseca, has recently taken forcible possession of a large portion of the lands and premises claimed by the plaintiff herein and claims title to the same under and by virtue of letters patent obtained by him, from the Dominion Government as aforesaid and has notified tenants occupying the lands of your complainant to pay no rent for the said lands and premises the property of your

complainant to complainant, but to pay such rents to him and has received rents from said tenants of your complainant and is still receiving and applying the same to his own use claiming that he is entitled to the same under the said letters patent so issued to him as aforesaid and has also recently attempted to levy rents from the tenants of the plaintiff, by distress and sale of their goods and chattels.

Your complainant therefore prays.

1. That it may be declared that the defendant William Gomez Fonseca, procured the issue of the said patent to himself unconscionably and in derogation of the rights of those from whom your complainant claims title and of the rights of the plaintiff, in regard to the portion of the said lands claimed by the plaintiff as aforesaid or that it may be declared that the said patent was issued in respect of the said lands herein before mentioned improvidently and through error and in ignorance of the rights of the several persons from whom the plaintiff claims and of the rights of the said plaintiff in the premises and that the said defendant William Gomez Fonseca, holds the said lands as Trustee for the Plaintiff. 10

2. Or that the said patent may be set aside so far as it affects the said lands of the plaintiff, by a decree of this Honorable Court and be declared absolutely null and void and of no effect so far as regards the said lands of the plaintiff.

3. That the agreement of the twelfth day of November, 1879, whereby the said defendant William Gomez Fonseca, agreed to convey to the defendant John C. Schultz, an undivided one-half share or interest in the lands in said Common, for which the said defendant William Gomez Fonseca, shall obtain letters patent from the Dominion Government if any such deed exists be declared null and void as to the rights of your complainant in the said lands and premises and that the said defendant John C. Schultz, be ordered to release and quit claim to your complainant any interest he may have obtained in the lands and premises of your complainant, under and by virtue of the said agreement and deed respectively. 20

4 That the said defendant William Gomez Fonseca, may be restrained by the order and injunction of this Honorable Court, from selling, disposing of collecting the rents or otherwise dealing or assuming to deal with the said lands and premises of your complainant and from interfering in any manner with the tenants of the plaintiff of any of the said lands and premises and may also be ordered to execute a quit claim deed to the plaintiff of her said lands. 30

5. That all the conveyances of the said lands and premises and through which your said complainant claims title to the said lands and premises may be confirmed.

6. That the defendants William Gomez Fonseca and John C. Schultz, may be ordered to pay the costs of this suit.

7. That for the purpose aforesaid all proper directions may be given and accounts taken.

8. That your complainant may have such further and other relief as the nature of the case may require and as to this Honorable Court may see meet and your complainant will ever pray.

DECREE IN MERCER VS. FONSECA.

This cause coming on to be heard on the 16th day of April A.D. 1885, and following days at the City of Winnipeg, for examination of witnesses and hearing in presence of counsel for all parties upon opening of the matter and upon hearing read the pleadings and upon hearing the evidence adduced on the part of the plaintiff and defendants, this Court did order that this cause should stand over for argument and the same coming on this day for argument upon hearing what was alleged by counsel aforesaid. 10

1. This Court doth declare that the Plaintiff has failed to establish a title to the lands in question in this cause or any part thereof under the provisions of the Manitoba Act.

2. And this Court doth further order and decree that the Plaintiff's Bill of Complaint be and the same is hereby dismissed with costs to be paid by the Plaintiff to the defendants forthwith after taxation thereof.

IN THE QUEEN'S BENCH,
IN EQUITY.

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Between HER MAJESTY'S ATTORNEY GENERAL FOR CANADA, at and by the relation of ELIZA MERCER,

Informant,

and

WILLIAM GOMEZ FONSECA and JOHN CHRISTIAN SCHULTZ,

Defendants.

Take Notice, that at the hearing of this cause the Informant will give in evidence 30 the depositions of John Stoughton Dennis and Robert Lang, taken at Ottawa, in the Province of Ontario, in the former suit in this Court in which the above named relator

Eliza Mercer was Plaintiff and the other parties hereto were defendants, the said John Stoughton Dennis having since that time departed this life and the said Lang having left Canada.

Dated this 4th day of March, A.D. 1886.

PATTERSON & BAKER,
Solicitors for Informant.

To Messrs. GLASS & GLASS, *Solicitors for Defendant Fonseca, and*
J. STEWART TUPPER, Esq., *Solicitor for Defendant Schultz.*

DECLARATION

OF

W. G. FONSECA IN SUPPORT OF HIS APPLICATION

FOR PART OF LOT 35.

Province of Manitoba, } In the matter of the Application of William Gomez Fonseca
 County of Selkirk, } for the issue of Letters Patent to him of part of Lot No. 35
 TO WIT: } Dominion Government survey of River Lots in the Parish
 of Winnipeg and St. John's in the Province of Manitoba,
 under the Act 33 Vic., cap. 3, sec. 32, and amendments thereto.

I, William Gomez Fonseca, of the City of Winnipeg, in the County of Selkirk, 10
 gentleman, do solemnly declare:

I. That in the year one thousand eight hundred and sixty-one I, with the per-
 mission of the Hudson's Bay Company, through the late Governor McTavish,
 located and settled on part of now lot number thirty-five according to Dominion Govern-
 ment survey of River Lots immediately in rear of that portion of land then occupied
 by the late Neil McDonald, leaving a width of ten chains and bounded on the south-
 erly side by the land of Alexander Logan, Esquire, now lot No. 11, and within a few
 years thereafter, not exceeding four, I fenced in a portion of said lot on the east side
 of the highway, and built thereon a dwelling house which I have ever since lived in
 and occupied and cultivated, and I also in the year 1869 built a store and outhouses 20
 on a portion of said lot within the range of ten chains aforesaid extending back from
 the river on the west side of the highway which I used for a store until about four
 years ago, and the same has since then been occupied and is now occupied by my
 tenants.

That my occupancy of the said part of lot ten chains has been peaceable and with-
 out interruption, and that to the best of my knowledge and belief my claim to the
 crown patent for that portion of said lot thirty-five in the rear of the late Neil
 McDonald's holding having a width of ten chains and extending back to the two mile
 limit is just and well founded.

That in the year 1867 I employed Herbert L. Sabine, an authorized surveyor under 30
 the Assiniboia Government to survey for myself and others the whole of lot No.
 35 aforesaid, and I assisted in such survey and planted the pickets and we surveyed
 to the whole extent of the outer two mile limit, and I paid him therefore my propor-
 tion equal to the ten chains in width aforesaid.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, intituled "An Act for the Suppression of Voluntary and Extra Judicial Oaths."

Declared at the City of Winnipeg, in
the Province of Manitoba, this
25th day of July, A. D. 1877, be-
fore me.

(Signed,)

J. H. BELL, J. P.

(Signed,)

WM. GOMEZ FONSECA.

DECLARATION
OF
A. DAHL IN SUPPORT OF APPLICATION OF W. G. FONSECA
FOR PART OF LOT 35.

In the matter of the application of William Gomez Fonseca, of the City of Winnipeg, in the Province of Manitoba, for the issue of letters patent to him of a part of lot No. thirty-five (35) in the Parish of St. John, in the Province of Manitoba, under the Act, 33 Vic., Cap. 3, Sec. 32 and amendment thereto.

I, Alexander Dahl, of the Parish of St. John, in the Province of Manitoba, do solemnly declare—

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That I have known the lands the subject of this application during the past thirty years.

That the said William Gomez Fonseca I am well acquainted with and know that in the year one thousand eight hundred and sixty-one he settled upon that portion of now lot No. 35, Dominion Survey of River lots in said Parish of St. John, immediately in the rear of that portion of land lying between said lot 35 and the Red River, then owned and occupied by the late Neil McDonald, and that within four years thereafter he fenced in and cultivated a portion of said lot and built thereon on the east side of the main highway a dwelling house in which he has since lived and now occupies, and that in the year one thousand eight hundred and sixty-nine he built 20 a store, which he used for a store for a number of years, on the west side of the main highway, and the same is now occupied by tenants as a dwelling, the width of said lot so enclosed and built on as aforesaid is ten chains

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, intituled "An Act for the Suppression of Voluntary and Extra Judicial Oaths."

Declared at the City of Winnipeg, in the
Province of Manitoba, this 23rd day of
July, 1877, before me.

(Signed,) W. N. KENNEDY, J. P.,
A Commissioner, B. R.

(Signed,)

ALEX DAHL.

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DECLARATION

OF

A. LOGAN IN SUPPORT OF W. G. FONSECA'S APPLICATION FOR A
PATENT FOR PART OF LOT 35.

In the matter of the application of William Gomez Fonseca, of the City of Winnipeg, in the County of Selkirk and Province of Manitoba, for the issue of letters patent to him of a part of lot number thirty-five in the Parish of St. John in said Province under the Act 33 Vict., cap. 3, sec. 32 and amendments thereto.

I, Alexander Logan, of the City of Winnipeg, aforesaid, Esquire, do solemnly declare.

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1. That I have known the land the subject of this application during the past twenty years.

2. That I have known the said William Gomez Fonseca since the year eighteen hundred and sixty and in the year following, namely, one thousand eight hundred and sixty-one, he settled upon that portion of now lot No. 35 Dominion Survey of River lots in said Parish of St. John, immediately in the rear of that portion of land lying between lot No. 35 and the Red River, then owned by the late Neil McDonald, and that within four years thereafter he built a dwelling house thereon and fenced in a portion of the same and that he has since resided in and occupied the same and that in the year 1869, he also built a store on the said part of lot No. 35, on the west side of the Highway which he used for a store for a time and since has occupied the same by his tenants.

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3. The width of said part of lot No. 35, so settled upon and fenced, was about ten chains from the northerly line of lot No. 11, which is owned by me.

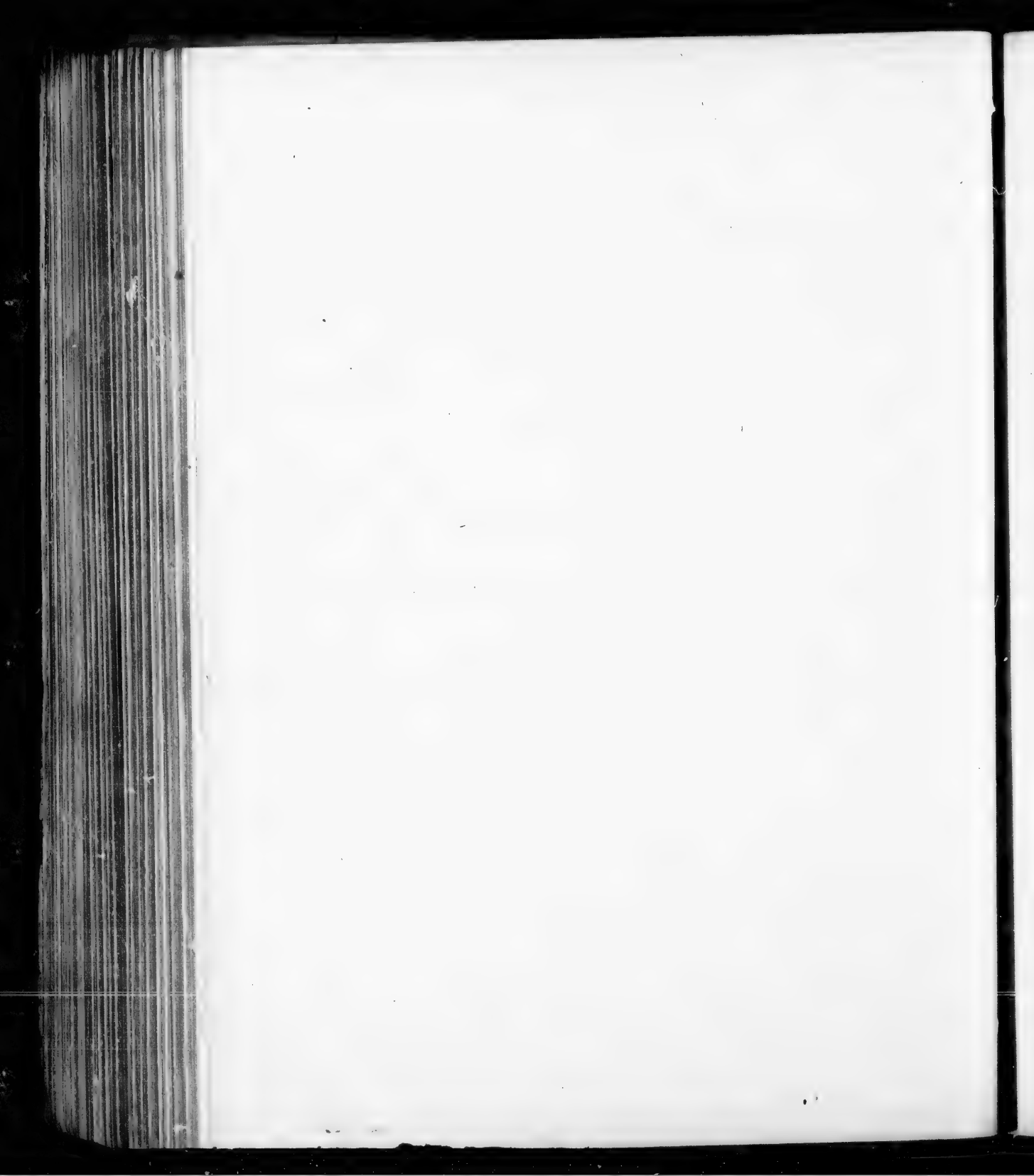
And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign intituled, "An Act for the Suppression of Voluntary and Extra Judicial Oaths."

Declared at the City of Winnipeg in the
Province of Manitoba, this 24th day
of July, A. D., 1877.

(Signed,)

ALEX. LOGAN. 30

(Signed,) J. H. BELL, J. P.



WINNIPEG, April 29th, 1882.

The Hon. The Minister of the Interior.

SIR:

I have the honor to enclose you my own application and affidavits in support of my claim to certain property, being part of Lot No. 35, Parish of St. John, Manitoba.

Your obedient servant,

WILLIAM LOGAN.

DECLARATION

OF

A. J. BELCH, IN SUPPORT OF HIS APPLICATION FOR A
PATENT FOR PART OF LOTS C, F, AND G.

In the matter of the application of Alexander James Belch, of the City of Winnipeg, in the County of Selkirk, for the issue of Letters Patent to him of parts of Lots Letters C, F, and G, in the City of Winnipeg, in the Province of Manitoba, under the 33 Vic., cap. 3, sec. 32 and amendments thereto, such parts of lots being more particularly described in the paper writing hereunto annexed marked A.

I, Alexander James Belch, of the City of Winnipeg and Province of Manitoba' 10
Gentleman, do solemnly declare —

1. That I have known the lands the subject of this application during the past two years.

2. That I am now the occupant of the said lands, and I claim title to that portion of Lots C and F above described by virtue of conveyances from Wm. Logan to David H. Thomas, dated 26th June, 1873, and from the said Thomas to John Freeman, dated 13th Oct., 1874, and from John Freeman to myself, dated 13th August, 1877, and to that portion of Lot G above described by conveyances from Edmund L. Barber to Walter R. Bown, dated 7th January, 1874, and from the said Bown to me, dated the 3rd February, 1875.

3. I do not know of any claim adverse to mine to the said portions of the said lots or any part thereof, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign intituled "An Act for the suppression of voluntary and extra judicial oaths."

Declared at Winnipeg in the County
of Selkirk, this 7th day of July,
A.D. 1879, before me.

(Signed,) J. A. M. ATKINS,
A Commissioner, &c.

(Signed,)

A. J. BELCH.

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DECLARATION

OF

W. LOGAN IN SUPPORT OF HIS APPLICATION FOR A PATENT
FOR LOTS C, D, E AND F.

In the matter of the application of Wm. Logan, of the City of Winnipeg, in the County of Selkirk and Province of Manitoba, for the issue to him of Letters-Patent for a certain portion of what is now known as Lot Number Thirty-five of the Dominion Government Survey, or Lot Number Two hundred and forty-four of the Hudson's Bay Company's Survey in the Parish of St. John, in the County of Selkirk and Province of Manitoba, under the Act 33 Vic., cap. 3, sec. 32 and amendments thereto.

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I, William Logan, of the City of Winnipeg, in the County of Selkirk and Province of Manitoba, Trader, do solemnly declare—

1. That I have known the lands the subject of this application during the past thirty years, and had possession of a portion of the same in 1863.

2. In the autumn of the year 1868 I staked out a portion of what is now known as Lot Number Thirty-five of the Dominion Government Survey, or Lot Number Two hundred and forty-four of the Hudson's Bay Company's Survey, otherwise known as the Point Douglas Common.

3. The said property claimed by me under this application may be better known and described as follows: Lots C, D, E, and F, as shewn on a map or plan drawn by Duncan Sinclair, Esq., a Dominion Land surveyor, in the year 1870, and registered in the Registry Office for the County of Selkirk.

20

4. In the autumn of the year 1868 I staked out a certain portion of the above-mentioned Point Douglas Common.

5. In the summer of 1869 I still further defined the bounds of the land which I intended to claim by ploughing around it.

6. In the autumn of 1869 I laid building logs on the said property, and in the month of May, 1870, I built a house upon the same in which I lived until I built another upon the same property in which I now reside and have continued to reside ever since.

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7. Although I am now applying for Lots C, D, E, and F, I still reserve my right to make a further application for the other lands claimed by me in the same locality.

8. It was perfectly understood at the time of the survey made by Duncan Sinclair by all persons interested that what I then and now claim should belong to me.

9. I am informed and believe that letters patent have been issued to one W. G. Fonseca for a portion of my property, including that upon which my house is situated.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, intituled "An Act for the suppression of voluntary and extra judicial oaths."

Declared at Winnipeg this 29th day
of April, A.D. 1882, before me.

(Signed,) E. L. OSLER,
A Commissioner, &c.

(Signed,)

WM. LOGAN.

DECLARATION

OF

HENRY COUTU IN SUPPORT OF WILLIAM LOGAN'S APPLICATION.

In the matter of the application of William Logan of the City of Winnipeg, in the County of Selkirk and Province of Manitoba for the issue of Letters Patent to him of a certain portion of what is now known as Lot number thirty five of the D. G. S. or Lot number 244 of the Hudson's Bay Co. Survey of the Parish of St. John in the County of Selkirk and Province of Manitoba, under the Act 33 Vic., Cap. 3, Sec. 32 and amendments thereto.

I, Henry Coutu, of the Parish of Lorette, in the Province of Manitoba, farmer, do 10 solemnly declare:

1. That I have known the lands the subject of this application during the past twenty years.

2. That previous to the year 1869 the land was owned by the above William Logan.

3. In the autumn of 1869 the said William Logan purchased building material and logs for the purpose of erecting a house upon the said lands and in the spring of 1870 the said Logan erected and completed a house thereon and resided in it and continued to do so till he erected another house upon the said lands and moved into it and has continued to reside therein up to the present time in undisturbed possession, and I 20 make this declaration, etc., etc.

Declared before me at Winnipeg this
29th April, A.D. 1882.

E. L. OSLER,
A Commissioner in B. R. }

(Signed), HENRY COUTU.

DECLARATION

OF

H. L. SABINE IN SUPPORT OF W.G. FONSECA'S APPLICATION
FOR A PATENT FOR PART OF LOT 35.

In the matter of the application of William Gomez Fonseca, of the City of Winnipeg, in the Province of Manitoba, for the issue of letters patent to him of a part of lot No. 35 in the Parish of St. John, in the Province of Manitoba, under the Act, 33 Vic., Cap. 3, Sec. 32, and amendments thereto.

I, Herbert L. Sabine, of the Parish of St. James, in the County of Selkirk, gentleman, do solemnly declare—

10

1. That I have known the lands, the subject of this application, during the past fifteen years.

2. That the said William Gomez Fonseca settled upon that portion of said now lot thirty-five (35) according to Dominion Survey of River lots upon which he resides in the year one thousand eight hundred and sixty-one or two, and a short time thereafter he built a dwelling house thereon on the east side of the Main Highway in which he and his family have ever since resided, and also fenced in a portion of the same and cultivated it.

3. That in the year one thousand eight hundred and sixty-seven I, as a duly authorized surveyor under the laws of Assiniboia, was employed by the said William Gomez Fonseca to survey the said portion of said lot No. 35 in connection with other parts of said lot extending back to the two mile limit. That I did so survey the said land and staked the boundary and I was assisted by the said William Gomez Fonseca in said survey and he paid me for said survey.

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4. That in the year 1869 the said Fonseca built a store on the west side of the Main Highway on that portion of said lot in range with his dwelling house aforesaid, which he occupied as a store for some time and then occupied as a dwelling house by tenants to the present date.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of an Act passed in the thirty-seventh year of Her Majesty's reign intitled "An Act for the Suppression of Voluntary and Extra Judicial Oaths."

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Declared at the City of Winnipeg, in the
Province of Manitoba, this 25th day of
July, A. D. 1877.

(Signed,)

H. L. SABINE.

(Signed,)

J. H. BELL, J. P.

DECLARATION

OF

JOHN ECCLES IN SUPPORT OF WM. LOGAN'S APPLICATION.

In the matter of the application of William Logan, of the City of Winnipeg, in the County of Selkirk and Province of Manitoba, for the issue to him of Letters Patent of a certain portion of what is known as Lot No. thirty-five of the Dominion Government survey or Lot No. two hundred and forty-four of the H. B. Co.'s survey in the Parish of St. John in the County of Selkirk and Province of Manitoba, under the Act 33 Vic, cap. 3, sec. 32, and amendments thereto.

I, John Eccles, of the Parish of St. Norbert, in the Province of Manitoba, farmer, 10 do solemnly declare:

1. That I have known the lands the subject of this application during the past twenty years.

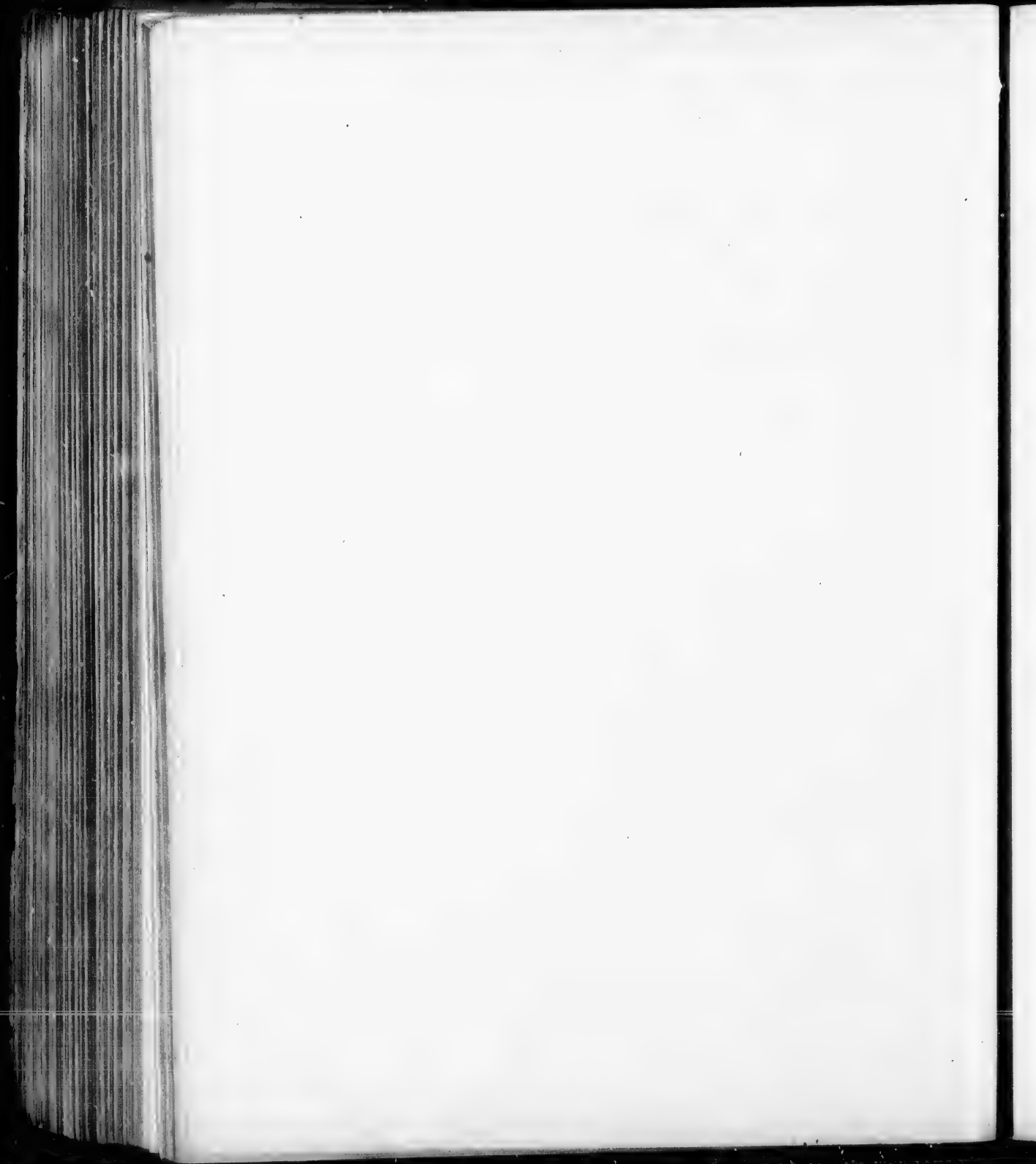
2. That the said William was in possession of the said lands prior to the year 1869.

3. That sometime in the autumn of 1869 the said William Logan purchased building material and logs for the erection of a house and hauled the same upon the said premises and afterwards in the spring of 1870 the said Logan erected a house upon the said property and resided thereon and has continued to reside thereon ever since in quiet and undisturbed possession, and I make this declaration, etc.

Declared before me at Winnipeg this
29th day of April, 1882.

E. L. OSLER,
A Commissioner in B. R.

(Signed), JOHN ECCLES.



DECLARATION

OF

DUNCAN SINCLAIR IN SUPPORT OF WILLIAM LOGAN'S APPLICATION
FOR PART OF LOT 35.

I, Duncan Sinclair, of the City of Winnipeg, in the County of Selkirk and Province of Manitoba, D.L.S., do solemnly declare:

1. That I came to Winnipeg on the 15th day of September, A.D. 1870, and that on the first or second day after my arrival I got acquainted with William Logan who with his family was then residing in a thatched roof log house which from its general appearance and especially its thatched roof must have been there for a considerable 10 time prior to the 15th day of July, 1870, and that said house was on what is now known as Lot 35 according to the Dominion Government Survey of the Parish of St. John, Manitoba, and more particularly known as the Point Douglas Common now forming part of subdivision of said Lot 35 and described as Lots lettered [C, D, E and F in the registered plan of survey of said subdivision subsequently made by me and recorded in the County of Selkirk and Province of Manitoba.

2. That he also at that time had other buildings in course of erection which was completed that same autumn.

3. That after the subdivision of said Lot 35 by me into Town Lots that portion in the possession of William Logan was lettered C, D, E and F, and was acquiesced in 20 and acknowledged as the property of William Logan aforesaid by the parties claiming any interest in said Lot 35.

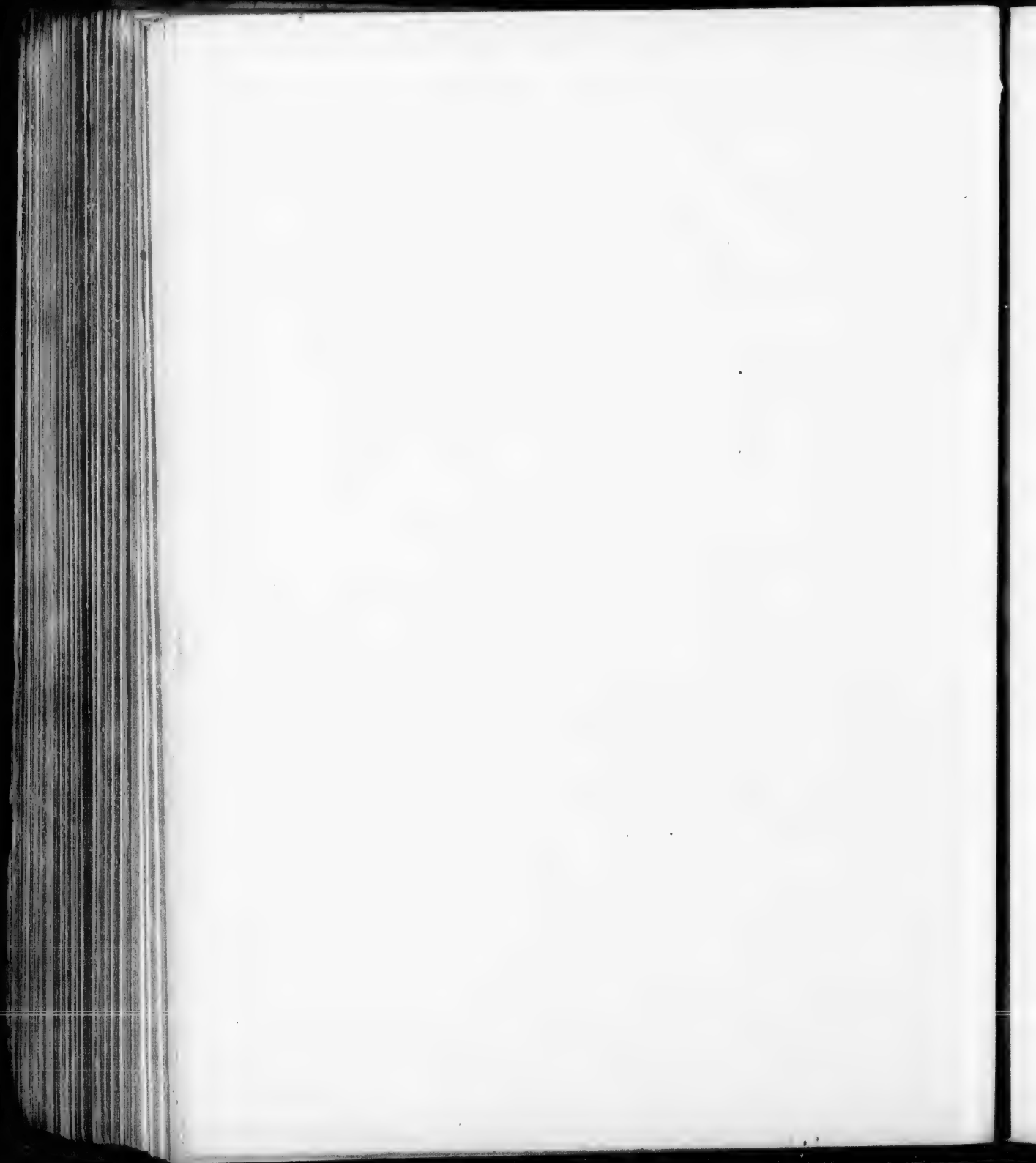
4. That I do further declare that the said thatched roof log house has ever since and is now in occupation by the said William Logan together with other buildings.

And I make this solemn declaration, etc.

Declared etc., this 29 April, 1882. }

E. L. OSLER,
A Commissioner in B. R. }

DUNCAN SINCLAIR, D.L.S.



A. M. BURGESS' LETTER RECOMMENDING ISSUE OF FIAT.

DEPARTMENT OF INTERIOR,

OTTAWA, 16th May, 1885.

SIR,

[In re Mercer vs. Fonseca.]

This claim has arisen somewhat as follows:

Mr. W. G. Fonseca, of Winnipeg, claimed a certain piece of Point Douglas Common at the same time and for the same reasons as were advanced by the claimants known as Point holders. Subsequently Mr. Fonseca made a separate and distinct claim on the ground of possession at the time of the transfer. In reporting upon the case Col. Dennis, late Deputy Head of this Department, repudiated Mr. Fonseca's claim to obtain the quantity of land for which he applied in the manner in which the application was made, but admitted that he had an equitable claim to receive some portion of land as nearly as possible in the neighborhood of the house through the occupancy of which at the time of the transfer his claim was made, and recommended to be granted to him an area not to exceed 25 acres.

In the statement he made under oath before the commission appointed by the Court of Queen's Bench of Manitoba to take evidence in this matter, Col. Dennis states distinctly that it was his intention and the intention of the Minister of the Interior that the land to be granted to Mr. Fonseca in this case should be land neither occupied nor claimed by any other person, and he further makes oath that through his instructions Mr. Lang was intrusted with the making the selection.

As a matter of fact, Mr. Lang had notice and I should judge by his own evidence and by the papers that he had personal information that one Logan, a brother-in-law of Fonseca's was at time of Fonseca's application in actual occupation of the lots known as C, D & E which were within the area claimed by Fonseca, and these lots were subsequently patented to Mr. Fonseca as part of the commutation granted him by the Department on account of his claim. An examination of the record shews that Fonseca figured in connection with Logan's claim as one of the witnesses corroborating his Logan's statement that he was in actual peaceable possession of this land at the time of the transfer; that there was no other person occupying or claiming the said lots; and in addition the statement was inserted in the affidavit that any claim which Fonseca might have made to this particular land was withdrawn. Moreover the Department of Interior during the pendency of Fonseca's case required him to file a statement showing the names of all parties who preferred claims to any portion of the lots for which he was endeavoring to procure patent and in response he filed a memorandum of such persons among the list mentioning William Logan as the owner of lots C, D and E, and stating that he did not wish to interfere with the claims of any of the persons men-



tioned in the memorandum. In the face of these facts however, the patent covering these particular lots and other lots similarly mentioned, issued and as before stated Colonel Dennis when examined upon the subject declared that its issuance was contrary to his intention.

Again in all the other cases except the case of Logan steps were taken by the Department to obtain from Mr. Fonseca a re-conveyance of the lots erroneously patented to him and he was granted other lands in lieu of the same. Why Logan's case was made an exception the evidence and papers fail satisfactorily to explain. Recently a suit was entered by those claiming through Logan in the Court of Queen's Bench in Manitoba in connection with which the evidence above alluded to was taken to set aside Fonseca's patent on the ground that Logan was in possession of the property at the time of the transfer. Upon the application of the solicitors for those claiming through Logan and upon my report to you that such course was expedient, the Department of Interior was advised that in your opinion the Crown might be made a party to the suit to restrain Fonseca from dealing with the property. It now appears that while Logan can prove possession within a few days of the transfer he is not likely to be able to prove actual possession at the time of the transfer; but it is submitted by his solicitors that under all the circumstances he is entitled to have the patent granted by the Crown cancelled, so that he may be in a position to acquire the title to the property upon such terms as the Department of Interior may think fit, and application is made to have the Crown made a party plaintiff to the suit for the cancellation of the patent. 10 20

It seems to be established beyond doubt that the patent to Fonseca was issued in error and should be cancelled and that the equivalent of the lands known as Lots C, D and E should be granted to Fonseca elsewhere and that Logan should be placed in a position to deal with the Crown in regard to the title to the lots in question.

I therefore recommend that the application of Logan's solicitors be recommended by you for favorable consideration by the Attorney General, so that he may grant his fiat for the commencement of a suit by information at the relation of Mercer and others, a draft of which accompanies this memorandum. 30

I have the honor to be, Sir,

Your obedient servant,

A. M. BURGESS,

Deputy of the Minister of the Interior.

Hon. Sir David L. Macpherson, K.C.M.G.,
Minister of the Interior.



A. J. BELCH'S LETTER, 19TH JULY, 1881.

DOMINION LANDS OFFICE,
BIRTLE, MAN., July 19, 1881.

DEAR SIR :

On my return from Winnipeg in February last I wrote you a note in which I think I stated I had reached that point on my return to resume my official work at Birtle. Not having however succeeded in the business object of my visit to Winnipeg which was principally to dispose of certain property on Point Douglas Common I purchased some years ago from one John Freeman, the sale to me being the nineteenth of the same property same 22nd November, 1872.

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After the transaction—the sale—was closed, I discovered the chain of title was imperfect, having no responsible beginning, William Logan and wife having conveyed without first obtaining title from the Crown.

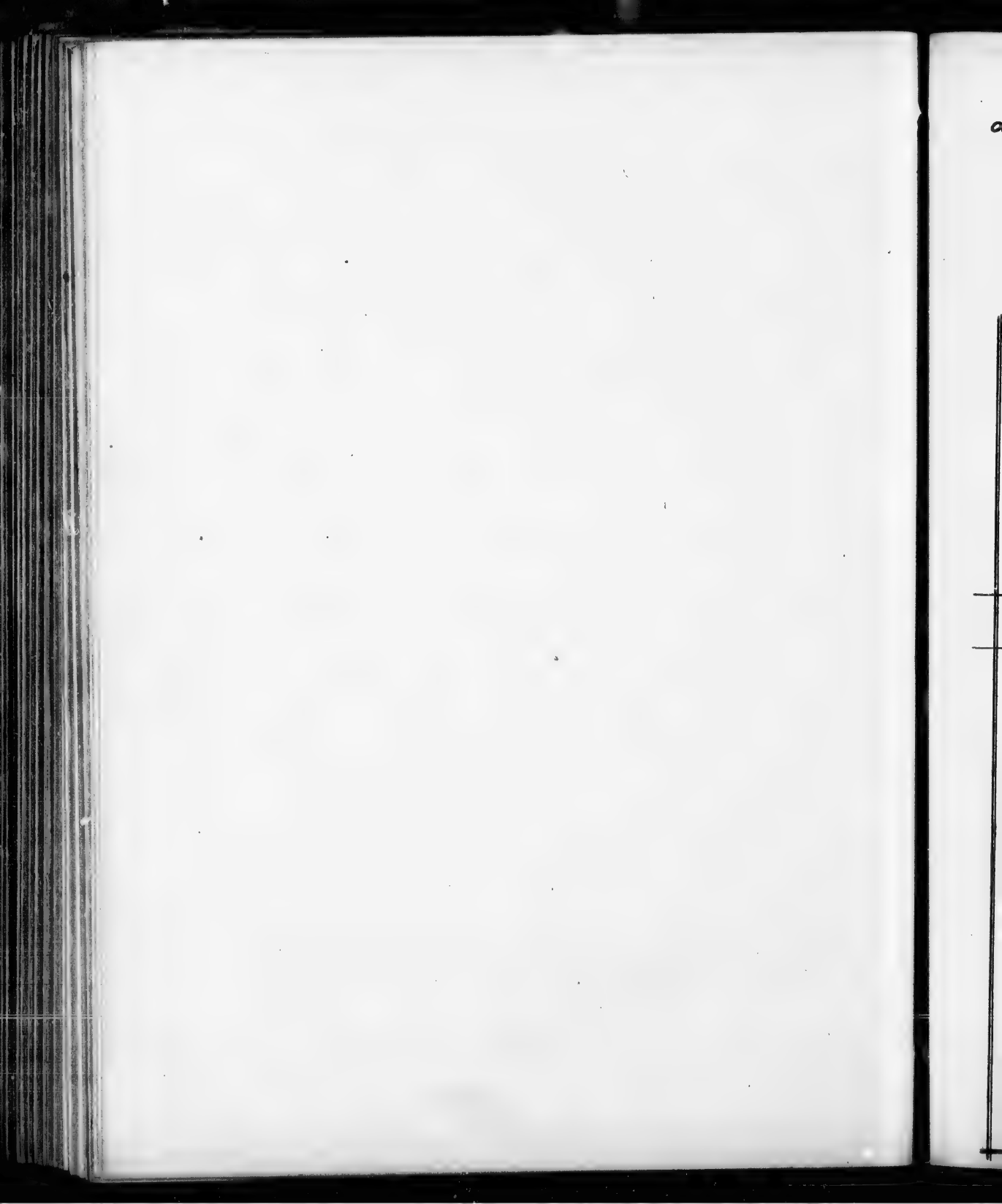
I then made application by myself and wife to the Department for these lots, together with another property on McWilliam street where my family reside. This application was made by Messrs. Atkins & Monkman, barristers, on 23rd July, 1879, and by them forwarded to Ottawa. The papers were duly received at the H. O. and returned to the office in Winnipeg in order that they might be dealt with in the ordinary way. Mr. Whitcher acknowledged the receipt of them. In the Letter Register it is noted that the papers were handed to Mr. Lang, but such is not the fact, as they were found accidentally on the 11th ult. stored in an out-of-the-way place in the vault up stairs in the Winnipeg office. In the interim some of the property which they covered was patented through the representations—misrepresentations is probably the proper word—of Dr. Schultz, by the Department to one Fonseca who deeded to Schultz half the property, as I understand, thus unjustly snatched out of the hands of innocent purchasers including myself, in consideration it is alleged of the doctor's influence in securing the patent.

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In consequence of the state of things I have described, is it unreasonable for me to ask the Department to interfere to make my title marketable? What is required is a Quit Claim deed from Fonseca and one from Schultz. The former has made a declaration which will be found among the papers so carefully preserved in the Winnipeg office, that he gave up all claim he had to me, and that William Logan was the original owner of the land.

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This being the case Schultz can have no claim. Fonseca in the face of his declaration now requires other property from the Government in lieu of that patented to him after he made the declaration referred to. Schultz's ground of refusal is probably that he holds a deed from Fonseca who holds a patent from the Crown. In the mean-



PLAN

OF THAT PART OF LOT 35 DOM. GOV. SURVEY OF THE PARISH OF ST. JOHN

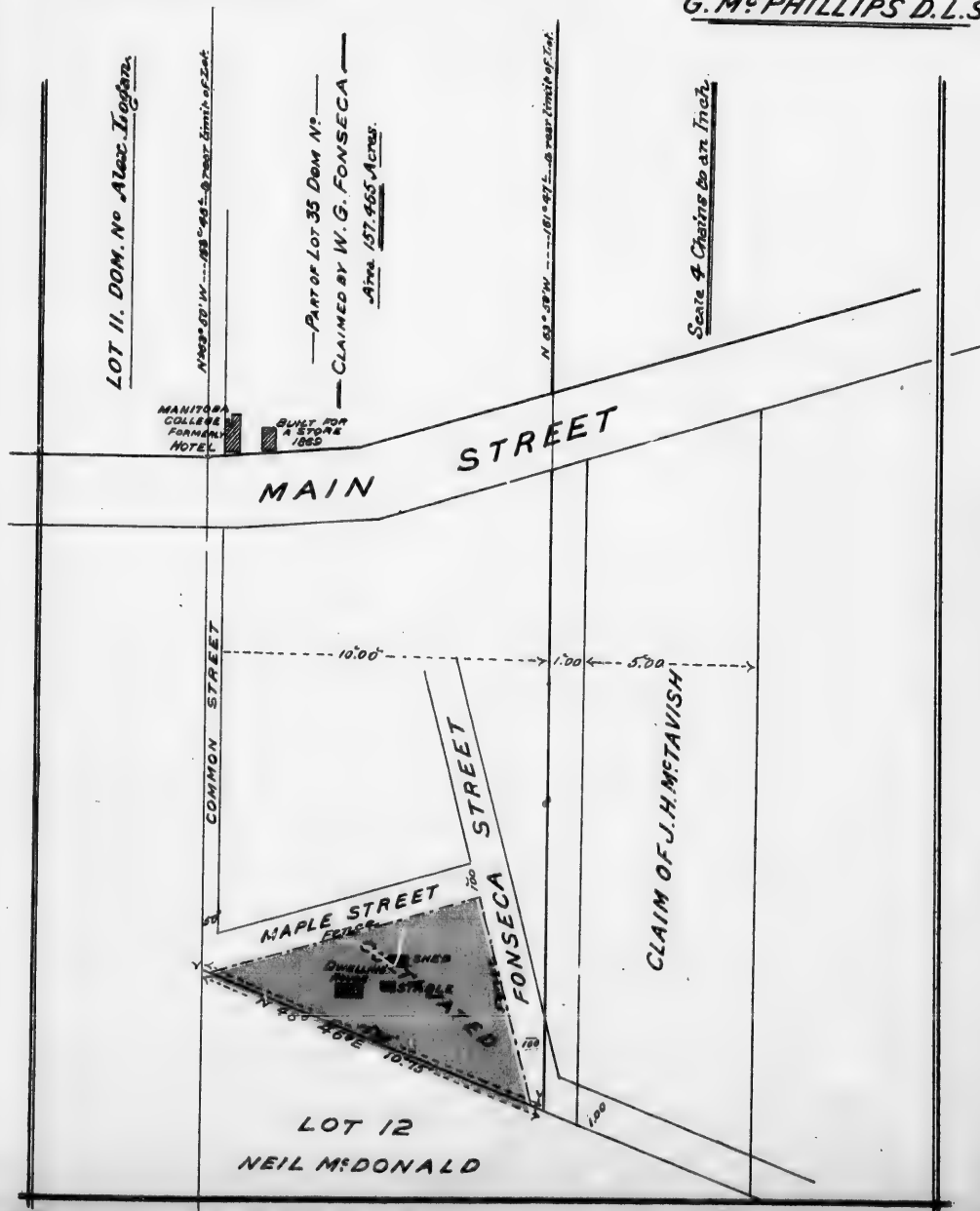
PROVINCE OF MANITOBA.

CLAIMED BY W. G. FONSECA

WINNIPEG AUGUST 23rd 1877.

SURVEYED BY

G. M^c PHILLIPS D.L.S.



time I have sold the Point Douglas property for a little over \$3000 and make title clear. Will the Department help me to do so.

Believe me my dear Sir,

Very sincerely yours,

A. J. BELCH.

To Lindsay Russell,
Surveyor General.

E. M. WOOD'S TELEGRAM, 13TH JUNE, 1881.

OTTAWA, 13th June, 1881.

By telegraph from Winnipeg, Man., 11th.

10

To LINDSAY RUSSELL.

Belch. Point Douglass Common papers found accidentally here in Land Office to-day. Will forward.

E. M. WOOD.

G. McPHILLIPS' LETTER, 23RD AUGUST, 1877.

WINNIPEG, Aug. 23, 1877.

To the Honorable
the Minister of the Interior,
Ottawa, Canada.

SIR,

Having surveyed that portion of lot 35 Dominion Government Survey of the Parish of St. John in the Province of Manitoba, I beg leave to report thereon as follows: The building alleged to have been built in 1869 is a substantial two story log house eighteen by forty feet and is now occupied as a dwelling house.

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The building marked (Manitoba College) on plan is a two and one half story frame house thirty by fifty feet with kitchen eighteen by twenty-four feet (18x24) attached thereto. It was built in 1872 and used by Mr. Fonseca as an hotel but was afterwards sold to the Manitoba Presbytery and is now used as a college.

The dwelling of Mr. Fonseca is a one and one half story frame building twenty by thirty feet with log kitchen attached. The frame part of the dwelling is an addition to the old house which Mr. Fonseca claims to have built in 1865. The out-houses are built of logs and are substantial.

30

There are also several buildings and considerable improvements on the claim of

W. G. Fonseca made by parties who have bought lots from the claimants of the Point Douglas Common.

I have the honor to be,

Your obedient servant,

G. McPHILLIPS, D.L.S.

A. M. BURGESS' LETTER TO MINISTER OF INTERIOR, 3RD SEPT., 1886.

DEPARTMENT OF THE INTERIOR,

OTTAWA, September 3, 1886.

Remarks on memorandum for Dr. Schultz, in re Mercer vs. Fonseca.

It is true as stated in this memorandum that the lots of land placed by Mr. 10
Fonseca, opposite the names of Kew, Stobart & Co., Thomas Spence and John Boskin,
have not been granted by the Crown to the several persons mentioned. On the
other hand it is not true that it was found on investigation that the several persons
were not entitled, for there is no record in the Department of any investigation
having been made nor is there any evidence supplied by the claimants in support of
the claim impliedly made in their behalf by Mr. Fonseca. It is quite otherwise in
regard to the claim of Logan.

The original papers in this case are at the present time in Winnipeg for use in the
Courts in connection with this suit. I am therefore unable to state at this moment
the date when Logan's claim was filed in the Department, but I know positively that 20
it was filed before the grant was made to Fonseca, that it was sent to Winnipeg for
investigation by Mr. Whiteher, that it never was investigated by Mr. Whiteher, but
was lost in Winnipeg office for two years and was finally discovered there by Mr.
Robert Lang, who brought it back with him to Ottawa in I think 1881.

The statement of the Department that the claim of Logan was not a valid one, is
contained in a letter written by Mr. Hall to Glass & Glass in 1883. I was then at
Rivière-du-Loup with Sir John Macdonald, who was at that time Minister of the
Interior, a letter from Glass & Glass, enquiring whether Logan's claim was to be
recognized was then received and without having any special knowledge of the sub-
ject, but upon a memorandum furnished him by Mr. Lang, Mr. Hall, wrote the letter 30
in question. That letter had no other authority for the statement it contained than
Mr. Lang. It was as a matter of fact not true that the claim of Logan had been passed
upon in any way, for Mercer was the representative of Logan, was then pressing the
Department to look into it. Logan furnished one affidavit corroborating his own

statement under oath, that he was in actual peaceable occupation of lots C, D and E, at the time of the transfer. Mr. Fonseca, under oath corroborated the statement so far as it related to occupation in 1870. Moreover, he made affidavit that he knew of no other claim to this land than Logan's except a claim of his own which he withdrew. It will be observed by the memorandum of the Honorable David Mills, of the 7th May, 1877, confirmed by Order-in-Council on the 10th of May, 1877, that the claims set up to Point Douglas Common, by the Point Holders of whom Mr. Fonseca was one were rejected except in regard to the smaller parcels composing part of the subdivision made by the Hudson Bay Company, of which they were individually in occupation, but as a matter of grace and favour, they were granted a continuation of 10 their claims of one acre on the Common for each acre of the lot on the river front of which they were in occupation as stated. The Departmental order under which Fonseca received his grant particularly sets forth that he is lawfully entitled to his actual enclosures only, but in view of all the circumstances recommends that he be granted 27 acres including the said actual inclosures. The locality of these 27 acres, except of course so much of them as might be covered by the actual inclosures is not stated and as a matter of fact Fonseca's patent covered several lots of which other people were in occupation. The evidence of Col. Dennis, given in the first suit in relation to the lots now in question, shows that Mr. Lang was sent by him to Winnipeg before the grant was made to Fonseca, for the express purpose of selecting such 20 lands for Fonseca and the other claimants on the Point as were neither occupied nor claimed by anybody else and subsequently to the issue of the patent Fonseca deeded over their holdings to the several occupants whose lands the patent covered, except in this one case of Logan. Lots C, D and E, are no part of Fonseca's enclosures, they are therefore no part of the Hudson Bay Company sub-division lot of which he was in occupation at the time of the transfer, but they are a portion of the land granted to him as an act of grace and favour on the part of the Crown.

A. M. BURGESS,
Deputy-Minister of the Interior.

JOHN R. HALL'S LETTER TO GLASS & GLASS, 11TH OCTOBER, 1886. 30

DEPARTMENT OF THE INTERIOR,

OTTAWA, 11th October, 1886.

MERCER vs. FONSECA.

GENTLEMEN,

I am directed by the Minister of the Interior, to inform you that he is advised by the Minister of Justice, that the permission to use the name of the Crown in suits of this nature is granted almost as a matter of course and is seldom refused. The fiat

for this suit was granted with a full knowledge of all the circumstances of the case and the Minister of Justice, will not now interfere to discontinue proceedings.

I have the honor to be,

Gentlemen,

Your obedient servant,

JOHN R. HALL,

Secretary.

Messrs. GLASS & GLASS,

Barristers,

Winnipeg, Man.

10

May 4th, 1887. Judgment of Walbridge, C. J.

The information is filed on the relation of Eliza Mercer, against William Gomez Fonseca and John Christian Schultz, asking to have the patent declared void issued to Fonseca, for lots C, D, E and F, in the City of Winnipeg, part of lot 244 Hudson Bay and of 35 Dominion Government Survey of Parish St. John in so far as it includes part of D, having a frontage on Main street of 92 feet, running back for uniform depth of 165 feet, including also portion of said lot E, having a frontage on Austin street and running back along Fonseca street of the same width to a depth of 132 feet. Austin street runs parallel with Main street and the part of E, claimed by Mrs. Mercer, will be found to lie directly to the East of the 92 feet on Main street, forming parcel from 20 Main street to Austin street.

The relator asserts that the patent for D and E, at least as to such parts as she claims was issued by the Crown acting through the Dominion Crown Lands Department through error or improvidence and under the Statute D, 46, Victoria, Chapter 17, Section 74, asks the same to be declared void. It will be noticed that the charge of fraud which is one of the grounds mentioned in the Statute upon which a patent may be declared void is not one of the charges laid in this Information.

The relator makes title under Wm. Logan.

By the Act 38 Victoria, Chapter 52, Section 3, it is enacted that persons in undisturbed occupancy of land prior to and being by themselves or their servants, tenants 30 or agents or those through whom they claim in actual peaceable possession on the fifteenth day of July, 1870, shall be entitled to receive letters patent therefor, granting the same absolutely in fee simple.

The Information in express terms states that William Logan, was not in possession on the 15th July, 1870, but that his possession commenced shortly thereafter, and the

right set up by the relator is that William Logan, took possession of the said lots C, D, E and F, as aforesaid and she claims through him and was in possession of part of the same at the time of filing the Information.

Her title must therefore depend upon Logan's.

It is in evidence that Logan first built a log house on D, the south east corner of which came over upon C. At this time there had been no survey into sub-divisions of that part of Point Douglas Common. The first survey was made by one Sinclair. When Logan built his house it does not appear to me that he so built it with reference to any particular lot, in fact this Common had not then been laid out into lots. He had no deed giving him boundaries. His possession therefore both in law and fact was only as extensive as that actually taken by him. 10

The building took a few days to put it up and was situate about 32-3 feet back from what is now Main street. Speaking of the building being on lot D, with a corner on C, is because it so turned out after a survey had been made not by Logan, but apparently by Fonseca and others; they paid for it. Logan says, there was no fence on D, E or F, until Schultz put it up in 1883, except around a stable, on E. There were no buildings but Logan's when the patent issued. Logan, neither fenced in any land before or after Sinclair's survey. Sinclair's survey was made 26th December, 1870.

Logan did not get a deed from the Trustees. He says, he was satisfied as he was 20 not disturbed.

When a person has no title he can have no constructive possession. His possession in such case extends only to his actual possession: *Lake vs. Bailey*, 5 Q. B. 136. This view seems to be that held by the Government.

Mr. Lindsay Russell, in his report of 3rd February, 1879, when reporting on Mr. Fonseca's claim states that it is be observed that Point Douglas Common, has never been surveyed either by the Hudson Bay Company, (in which he is in error as the lot is well known as Number 244 Hudson Bay Company survey and so appears in their books) says under these circumstances the possession of Mr. Fonseca, could not be affirmed to include any greater extent than his own actual enclosures and did not 30 therefore carry with it the occupation of any definite one of the system of lots.

The survey of lots when Logan took possession had not been made and the subsequent survey is that referred to where the log house is spoken of as being on D and partly on C. The same house is spoken of being wholly on C. In the fall of 1870, Logan says, he built a second building wholly on D, a log building and that these buildings are there yet. That he had put up a stable on E, before he put up the second building. He joined these two buildings, first building 14 x 16, second 33 x 22, stable 20 x 20, another building 23 x 18. There was cellar under all these buildings. It only took a week to put up the first building. The cellar under the first building

did not extend to C, as that building appeared only to have been set a few feet over the line; the second building is south-west of the first so must have been on C, as the first stood partly on C. Point Douglas was divided into a number of small lots which were in the actual occupation of persons called Point holders on the 15th July, 1870. Besides these small holdings the large lot called in the Hudson Bay survey 244, and the subsequent Government survey lot 35 containing 661 acres, this 244 Hudson Bay Company survey, is called Point Douglas Common. Main street of this City passing through this Common and the land in question being in a principal business part of the City, it has become exceedingly valuable. The Point holders having used this Common for cutting hay and for pasture set up a claim to it as owners. The Points 10 owners assembled and elected Trustees of this Common, before any sub-division of any part of the Common had been made. They had a portion of the Common surveyed into lots and conveyed to those desiring it, certain of these sub-divisions. By an Order in Council, 10th May, 1877, the Government ordered that each of the Point holders, should be entitled to have parts of the Common equal in quantity to what each person held of Point Douglas spoken of as acre for acre and also that the persons who held deeds from the Trustees, should be entitled to patents for the lots for which they held such deeds. Others asserted their titles to parts of the Common, as being in peaceable possession on the 15th July, 1870, under the Manitoba Act. Besides this 20 Fonseca, was in possession on 15th July, 1870, of part of the Common, being ten chains in width consisting of about 5 acres and he claimed to be entitled to that width of the Common, to the full extent of the lot. For this latter claim a quantity of land of 25 acres, was by the recommendation of the Surveyor-General, directed to be given to Fonseca. This Order in Council therefor is dated 10th May, 1877, and the Departmental order of 3rd February, 1879, are admitted to be unobjectionable, but it is contended that the error arose in the manner of selecting the lots comprised in the patent to Fonseca, of 5th December, 1879, especially as to lots C, D, E, F.

It is contended that the possession of Wm. Logan, though taken after the 15th July, 1870, and the improvements made by him give him such an equitable claim that a grant of those lands without notice to him is an error and by reason of it the patent 30 to the extent at least of the claim by the relator, should be declared void by the Court.

It will be observed that Wm. Logan had petitioned the Government for these Lots C, D, E, and F, claiming them under the Act 38 Vict., c. 52, sec. 3 (Manitoba Act), and in this claim he was supported by Fonseca, though Fonseca did not declare that Logan was in possession before the 15th July, 1870, yet he asserted that Logan was entitled to these lots, he himself relinquishing any right he might have to them. This petition of Logan though unopposed was rejected. At that time it was manifest that Logan had possession, though his possession was not before 15th July, 1870, and if the Department had considered possession subsequent to the 15th July, 1870, entitled an ap- 40

plicant to the land it should have then been granted to him. By this rejection of his claim the Department showed that possession with improvements merely did not entitle an applicant to the land. And it appears to me that to declare a person in peaceable possession on the 15th July, 1870, as having a right and also to declare one who was not in possession until after that time to be equally entitled to the land could not be said to confer upon the former any right of any particular value, as the person coming in after that day, by obtaining the land, got an equal advantage. It is only upon the supposition that those in peaceable possession on 15th July, 1870, had a right, and those in possession after that day had none, that a possession on the 15th July, 1870, could be said to be of any peculiar value. It is evident the Department 10 took this view of it when they rejected Wm. Logan's petition, otherwise they should have allowed it. If they had given him the land then recognizing his possession after 15th July, 1870, as valid, the matter would have been ended. I can hardly see why they should have rejected it then and seek to grant it now. Of the 25 acres mentioned in the report of the 3rd February, 1879, agreed to be given to Fonseca, he got 17 acres for which this patent was granted. It is to be remarked that the selection of the land was not made by Fonseca but was entirely the act of the Department. The Government were under no obligation to make a grant to Logan, and it is claimed on the Information only as an act of grace.

Logan's petition had been before them and was unopposed. It had the benefit of 20 Fonseca's support, Logan being Fonseca's brother-in-law, and yet was rejected. I can find no case when after the Government have deliberately exercised the undoubted right of the Crown to grant or reject an application the Court have undertaken to control the subsequent issue of patent to any one to whom the Government chose to give it, but on the contrary when the Government have exercised such their right as between contesting parties the power of the Court to rescind such determination has been held not to exist. *Simpson v. Grant*, 5 Gr. 267.

No one but Wm. Logan asserted any right to C, D, E, and F, until the issue of the patent to Fonseca of 9th Dec. 1879. The possession of Wm. Logan was at least co-extensive with the buildings he had erected, and as to any possession beyond these 30 buildings, if possession at all, it was constructive.

For these lots no one held deeds from the trustees, and the land, except as to the claim of Logan, was Government land, to be granted to Logan or to whomsoever the Government might grant it.

Wm. Logan has parted with his rights to all the land in part to Fonseca and Schultz, and to the Relator, or those through whom she claims, to 92 feet on Main street, extending to the east four chains, and to this parcel the Relator has the title which Wm. Logan had, and claims the grace of the Crown in her favor in respect of the possession and improvements made by Wm. Logan. From Main street to Austin street is five chains. There is one chain in depth not accounted for. It is not sufficient 40

for the Crown merely to suggest error or improvidence, it must be both set out and established by a proof which excludes all reasonable doubt upon the subject, so held in *Attorney-General v. Garbett*, 5 Grant 184.

Before setting aside a deed for mistake the Court requires to be clearly convinced by the most satisfactory evidence first that the mistake really exists and that it is one which really ought to be corrected.

Mortimer v. Shortall, 2 Dru. and W. 371, per Sugden C. & *MacCormack v. MacCormack* I. R., 2 Equity 130, the remarks by Estlin V. C. in *Attorney-General v. Garbett*, 5 Grant 184, shows that while grants from the Crown stand in different footing from deeds inter parties, that the confidence of persons holding under and through patents would be rudely shaken if, except upon the most satisfactory evidence and for good and substantial reasons, these grants are declared void, and more particularly so when the rights of third parties are affected by declaring the same void. Subsequent purchasers for value though innocent of the error or improvidence on the part of the Government, or of the fraud of the grantee, are not protected. *Cummings v. Forrester*, J. & W. 342, cited and followed in *Attorney-General v. McNulty*, II Grant 284. The Government have recognized three classes of cases to whom grants of this Common should be made, which are the Point holders, those claiming by deed under the trustees, and persons in actual peaceable possession on 15th July, 1870. Wm. Logan does not come under any of these classes. His claim rests simply upon entry upon 20 part of the Common, erecting such buildings as I have described, and claims his right should be co-extensive with the limits of the lots laid down after his entry. It is set up that the buildings so erected give him an equitable claim to this land. If this be so, then a possession after the 15th July, 1870, would be equally valuable with one before that date, whilst the statute has fixed the date 15th July, 1870, as that which entitles a person to patent.

Henderson v. Seymour, 9 U. C. R. 52, treats such entry as an intrusion, and in *Farmer v. Livingstone*, 5 Supreme Court Reports 232, the remarks of Gwynne J. upon the rights of persons who set up a claim by reason of possession are adverse to the relator's contention, and the same case again in 8 Sup. C. R. 140.

The possession of Logan presented no obstacle to the right of the Crown to make a grant.

If granted improvidently, in what does the improvidence consist? Nothing which the law can recognize as a right in the relator has been set up, no misrepresentation or concealment on the part of the defendant has been shown. Mere sentiment or compassion for the person whose possession is disturbed cannot afford a reasonable ground for declaring void a record of so high a nature as a grant from the Crown under the seal of the Dominion of Canada. The relator states the error to consist in granting the land to Fonseca whilst Logan was in possession. Is this either error or improvi-

dence? It would not be error unless the possession of Logan conferred a right. Then is it improvidence, if done with full knowledge of Logan's possession or if done without the knowledge of his possession. I think not, unless I can say that possession conferred a right, but I think it does not.

On the whole I think Fonseca had a right, or at least the Government acknowledged that he had such, and agreed to give him 25 acres (of which the 17 acres in the patent form part). This grant to Fonseca was to conform to the outlines of certain streets, and to include certain blocks. This must mean that it was to be within the part of the Common surveyed so that streets and blocks might be said to exist. It appears that part of the lands included within C, D, E, and F, have become the property 10 of Schultz by purchase from those who purchased from Logan, that Fonseca had also purchased other parts. Those titles were not in reality disputed.

The Relator claims that the whole patent for C, D, E, and F, should be declared void, leaving the parties to establish their rights under or through Logan on an application to the Government after patent declared void. I don't see the force of this. It is better to confine the Relator's claim to what she really does claim, 92 feet on Main street and a further parcel on Austin street.

In my opinion the claim to set aside the patent to C, D, E, and F, fails for want of evidence to show that which constitutes either error or improvidence. The petition I think should be dismissed with the costs, and as those cannot be had against the 20 Attorney-General, they should be collected from the Relator under the bond or other security given by the Relator as a condition on being allowed to file this Information.

IN THE QUEEN'S BENCH.

IN EQUITY.

THE HONORABLE THE CHIEF JUSTICE.

Wednesday, the fourth day of May, A.D. 1887.

BETWEEN

Her Majesty's Attorney-General for Canada, at and
by the relation of Eliza Mercer,

Informant.

and

William Gomez Fonseca and John Christian Schultz, 10
Defendants.

This cause coming on for examination of witnesses and hearing on the ninth day of November now last past in the presence of council for all parties, upon opening of the matter upon hearing read the pleadings and proceedings herein and the evidence adduced and what was alleged by council aforesaid,

This Court was pleased to order that the same should stand over for Judgment and the same coming on this present day for Judgment,

This Court doth Order and Decree that the Information filed in this cause be and the same is hereby dismissed out of this Court.

2. And this Court doth further order that the said Relator Eliza Mercer do pay to 20 the Defendants their costs of suit forthwith after taxation thereof by the Master of this Court.

(Signed)

A. LEMON,
Registrar.

IN THE QUEEN'S BENCH
IN EQUITY.

Between HER MAJESTY'S ATTORNEY-GENERAL FOR CANADA at and by the relation
of ELIZA MERCER,

and

WILLIAM GOMEZ FONSECA and JOHN CHRISTIAN SCHULTZ,
Defendants.

TAKE NOTICE that this cause has this day been entered with the Prothonotary of this Court for rehearing of the order of His Lordship the Chief Justice of this Court, 10 pronounced on the fourth day of May instant, dismissing the Information herein with costs, and for review of the said order by the full Court.

The Informant complains of said dismissal, and seeks the relief prayed by him in the Information herein.

Dated this 20th day of May, A. D. 1887.

PATTERSON & BAKER,
Solicitors for the Informant.

To Messrs. Glass & Glass,
Solicitors for deft. Fonseca,
and to Messrs. Macdonald, Tupper & Phippen,
Solicitors for deft. Schultz.



7th April, 1888. Taylor, C. J., delivered the judgment of the Court. (a)

This is an Information filed by the Attorney-General of Canada, upon the relation of Eliza Mercer, praying that a patent, issued on the 5th of December, 1879, granting to the defendant Fonseca, among other lands, Lots C, D, E, & F, part of Point Douglas Common, in the City of Winnipeg, may be declared, in respect of these four lots, to have issued improvidently and through error, and in ignorance of the rights of the several persons mentioned in the Information, and that the patent may be set aside, so far as it affects these lots, and declared absolutely null and void, and of no effect as regards them. The defendants are William Gomez Fonseca, the patentee, and the Hon. John C. Schultz, to whom Fonseca, by an instrument, dated the 12th of November, 1879, agreed to convey one half of any lands, part of the Point Douglas Common, which might be granted to him by the Crown. 10

Both defendants, by their answers, deny any fraud or misconduct about the obtaining of the patent. They both set up that Fonseca was entitled to the lands under the Manitoba Act, 33 Vict. c. 3, D., and submit, that parties bringing themselves within the provisions of that Act, are the owners of such lands in fee, and that it is not within the power of the Dominion Government, or the Department of the Interior, to deprive them of such lands, and that patents, granted in such cases by the Dominion Government, do not confer title, but are, (after investigation) only confirmatory of a title theretofore had by the applicant; that no practice of the Department of the Interior, 20 of the Dominion Government, could, or can, exist of a nature to deprive parties establishing their rights to lands under the Manitoba Act, of such land, or to grant these lands to parties who may have gone into possession since the 15th July, 1870. Both defendants further set up that, by the express terms of an Order in Council of 3rd February, 1879, the rights of the defendant Fonseca were affirmed, but owing to the increased value of the lands, and the peculiar circumstances of the case, the Dominion Government offered him the lands referred to in the Order in Council, by way of compromise, in settlement and liquidation of his claim, and he accepted the offer, and in pursuance thereof received the patent, and that it is contrary to the practice of the Court to grant relief in such a case, and the 30 Attorney-General is now estopped from saying that the Government made the conveyance through error or improvidence. The answers further set up that, a former suit was brought by the relator for the purpose of establishing her right to the lands now in question, to which the Attorney-General was a party defendant, that in the suit so brought, a decree was made at the hearing, dismissing the bill, and it is submitted that the Attorney-General could in his answer have set up the facts alleged in this Information, and is estopped by the judgment of the Court in that suit, from claiming the relief asked for in this suit. Both de-

(a) Present : Taylor, C. J.; Dubuc, Killam, J. J.

defendants claim that the Attorney-General is estopped by laches and delay, from prosecuting this suit. The defendant Schultz, in addition, sets up that he is a purchaser for value without notice, and claims the benefit of that plea.

At the hearing, a decree was made dismissing the Information, and the case is now before the Court by way of a rehearing of that decree, at the instance of the Informant.

The plea of the defendant Schultz, that he is a purchaser for value without notice, is clearly not a bar to granting the relief sought by the Attorney-General, if it should otherwise be given. As between subject and subject, such a plea is a good defence, but it has no place against the Crown. In such a case, it is not the maxim, *Potior est conditio defendentis*, but *Debeo digniori*, which is applicable. In *Cummings v. Forrester*, 2 J. & W. 234, the Master of the Rolls, speaking of a grant made by the Crown under mistake, held, that the power of calling back its grants, when made under mistake, is not like any right possessed by individuals, for when it has been deceived, the grant may be recalled notwithstanding any derivative title depending upon it. So, in *Attorney-General v. McNulty*, 11 Gr. 284, Mowat, V. C., said, "The principle upon which this Court allows the defence of a purchaser for value without notice is, that the defendant in such a case, has an equal equity with the plaintiff; and that between persons having equal equities, this Court will not interfere on either side. But I take this rule to be inapplicable where the Queen is concerned; for among the many respects in which the rules of law, with regard to the Crown, differ from those affecting private persons, is the established principle, that, where the right of the Queen and that of a subject meet at one and the same time, the right of the Queen shall be preserved." The judgment of Van Koughnet, C., in *Stevens v. Cook*, 10 Gr. 410; and *Broom's Leg. Max.*, (5 ed.) 55, may also be referred to on this point.

The defence of laches on the part of the Crown, has no more force on behalf of the defendants. That also, is a defence which cannot be set up against the Crown. The *Nullum Tempus* Act, 9 Geo. 3, c. 16, is not in force in this Province, but even if it were so, it would not help the defendants, for by it, sixty years with adverse possession, is the period which bars the Crown. In 2 Inst. 273, it is laid down that, in pursuance of the principle of the sovereign's incapability of doing wrong, the law determines that in the Crown there can be no negligence or laches, and therefore it had been held that no delay in resorting to his remedy would bar the king's right. Or, as it is put in *Bac. Abr.*, vol. 8, p. 95, "From the presumption that the king is daily employed in the weighty and public affairs of government, it hath become an established rule at common law that no laches shall be attributed to him, nor is he in any way to suffer in his interests, which are certain and permanent. *Vigilantibus non dormientibus jura subveniunt*, is the rule for a subject, but *nullum tempus occurrit regi*, is the king's plea." In the United States the same rule prevails, founded upon public policy. In *U. S. v. Kirkpatrick*, 9 Wheat. 720, Story, J. said, "The general principle is, that laches is not

imputed to the Government, and this maxim is founded, not in the notion of extraordinary prerogative, but upon a great public policy. The Government can transact its business only through its agents, and its final operations are so various and its agencies so numerous and scattered, that the utmost vigilance would not save the public from most serious losses if the doctrine of laches can be applied to its transactions." See also *U. S. v. Vanzandt*, 11 Wheat. 184; *U. S. v. Nicholl*, 12 Wheat. 505; *Dox v. Post Master General*, 1 Pet. 325.

I do not see how the Attorney-General can be estopped by the former suit from instituting the present one.

That was a suit by Eliza Mercer, the relator here, in her own right as plaintiff, 10 against the defendants in this suit, to which the Attorney-General was also a defendant. That the plaintiff in that suit, is the relator here, can be no reason for so holding. Besides the former suit was to have the patent set aside on the ground that it had been issued in ignorance of, and to the injury of the plaintiff's rights, but broader ground is taken now, the allegation being that it was issued in ignorance of the rights of several persons, of whom the relator is only one. The relator suing as a plaintiff in her own right, might fail, under such authorities as *Boulton v. Jeffrey*, 1 Gr. E. & A. 111, and *Lawrence v. Pomeroy*, 9 Gr. 474, and yet, the patent be set aside in a suit instituted by the Crown. That the Attorney-General was a party to the former suit, could not alone, prevent him from bringing this one. *Martyn v. Kennedy*, 20 4 Gr. 61, was a suit to set aside a patent to a rectory, and the objection was taken that the Attorney-General should have been a party. Dealing with one ground upon which that was urged, that, unless the Crown was a party, it would not be bound, and the defendant might be subjected to a double litigation about the same matter, Esten, V.C., said, "The difficulty would not be surmounted by making the Attorney-General a party on behalf of the Crown, which could not of course be prejudiced by the failure of the plaintiff to establish his case, and could then, as well as now, in case of a decree against the plaintiff, proceed *de novo* against the defendant for the purpose of recalling this patent." The only ground for holding the Attorney-General estopped by the former suit, in support of which even the shadow of an argument could be urged, 20 would be, that he might in it have obtained the relief now prayed for, and was bound to have prayed for such relief in that suit. But how could he have got that? The Gen. Ord. which allows a defendant to pray by his answer cross relief against the plaintiff, does not extend to allowing him to pray cross relief against a co-defendant. Had he, in that suit, prayed to have this patent set aside as issued improvidently and in ignorance, he could have prayed for such relief only against the present defendants, then his co-defendants. Even if he could have prayed for such relief, I do not see how he was under any obligation to have done so. Certainly the Gen. Ord. does not make it imperative upon him to do so, for it only says a defendant "may claim" any relief, &c.

It is further urged for the defence, that Fonseca had a title to the land now in question under the Manitoba Act, which it was not in the power of the Government to deprive him of, the patent being only confirmatory of that title, and the grant made of these lands was in the nature of a compromise, so that the court, in accordance with well established practice, will not interfere. The land in question forms part of what was known as the Point Douglas Common, a large tract of land upon which the holders of lots fronting on the Red River at Point Douglas, had, or claimed they had, the right of pasturing cattle and cutting hay. Fonseca was no doubt on the 15th July, 1870, the holder of a lot or lots on Point Douglas, and being so, was one of the persons entitled to or claiming to be entitled to, these rights and benefits. The persons 10 who claimed to be entitled to an interest in that common, by virtue of their possession of lots on the river, as laid out by Lord Selkirk, by a deed, dated the 14th of October, 1872, after reciting that it had been agreed that the common so belonging and attached to the possession aforesaid should be laid out in accordance with a map or plan registered in the Registry Office for the County of Selkirk, that the lands so laid out should be sold, and the moneys arising from such sales held in trust, and divided proportionately, in accordance with a resolution passed at a meeting of the shareholders, among the parties entitled to the benefits and profits, that it had been agreed that trustees should be appointed for the purpose of carrying out the trust, 20 that the parties of the second part had been appointed trustees, and had accepted the trust, granted and conveyed unto the parties of the second part, "the lands before mentioned, which may be particularly known as Lot 244, or as the reserve in common belonging to the owners, occupiers and possessors of Point Douglas, to have and to hold the same, for the purposes aforesaid, unto, and to the use of, them the said parties of the second part, their successors and assigns for ever." The parties of the second part were John Sutherland, Edmund L. Barber, Alex. M. Brown, Walter R. Bown and the defendant Fonseca. These trustees were also parties of the first part, as was the defendant Schultz. After the execution of this deed, the trustees applied to the Government for a patent to the land, and their claim was dealt with, and disposed of, by an Order in Council, dated the 10th of May, 1877. 30

The claim made by the trustees having been disposed of, Fonseca on the 26th July, 1877, made a claim on his own behalf.

In his petition he alleged that prior to, and on, the 15th of July, 1870, he was by himself, and through his servants, tenants and agents, in actual peaceable possession of a portion of Lot 35, in the Parish of St. John, according to Dominion survey of river lots, to wit the southern ten chains of said lot, commencing in the rear of the land on lot No. 11, owned by the late Neil McDonald, and thence running back, the usual distance to the two mile limit, and he prayed that a patent might issue to him for the same. This lot 35 Dominion survey, is, as I understand, the same land as lot 244, spoken of in the deed of 15th October, 1872. from the Point Holders to 40

the Trustees. Fonseca had possession of several parcels on the river front, one of them being a triangular piece, having a base of ten chains, and it was on the possession of this, that he seems to have based his claim for a grant of an equal width, all the distance to the rear of the common. Now, as to all that part of the land claimed by Fonseca, which was part of the common, he could plainly have no greater right than the Trustees, to whom, he, and the other Point Holders had conveyed their interests, in the deed of 15th October, 1872, described as an interest in common to the land extending back from their different possessions on the river, and which was by the deed conveyed, as lot 244, or, as the reserve in common belonging to the owners, occupiers, and possessors of Point Douglas. The claim of Fonseca, so far as it extended to land forming part of the common, stood upon precisely the same footing as that of the Trustees to the same land, at most, what he had a right to, was, not to have a grant of this particular land, or to have his title to this particular land, confirmed by grant from the Crown, but to have a grant of land, of some piece of land or another, as a commutation for rights of common and cutting hay.

In the Order in Council of 10th May, 1887, the claims in connection with this Point Douglas common, are spoken of as, "certain claims for patent of an exceptional character." It then sets out the allegations made by the claimants in support of their application, as follows:—"1. That the late Lord Selkirk, at or about the time he founded the Red River settlement, laid out the river lots on Point Douglas, and gave the same to certain of his servants and retainers, marking off the large tract in rear to be held as a common, by and for the benefit of the Point owners. Two of the claimants have stated their belief that Lord Selkirk actually conveyed this land to the settlers, at the same time that he granted them the small lots. 2. That they have always asserted their claim thereto, and have, with a slight interruption, enjoyed the continuous and exclusive right of hay and common over the same, and that the latter right has always been recognized in the surrounding community. 3. That the right so claimed and enjoyed by them, is superior in all respects, to that conceded by the law of the Assiniboia Council to the owners of river lots between the two mile and the four mile lines. 4. That the Government having recognized the hay and common right claimed in the outer two miles, as above, to be of such character as to justify the commutation of the same by an absolute grant of the land therein to the respective owners of lots fronting on the river, they, the applicants should be dealt with not less favorably, that is to say, by an actual grant of the land embraced in the tract lying in rear of the Point lots. 5. They further claim a patent for the land under the provisions of the Act 38 Vict., cap. 52, by which was enacted, 'that persons satisfactorily establishing undisturbed occupancy of any lands within the Province prior to and being by themselves or their servants, tenants or agents, or those through whom they claim, in actual peaceable possession thereof, on the 15th day of July, 1870, shall be entitled to receive letters patent therefor, granting the same absolutely to them respectively in fee simple.'"

The Minister of the Interior then proceeded to deal with these claims, as follows :—

" 1. It may be conceded that the claimants had for many years previous to the transfer, enjoyed a right of common and of cutting hay over the land, but the enjoyment of such right can only be regarded as having been exclusive in the same light as the hay and common right in the outer two miles enjoyed by the settlers on farm lots in the old Parishes was exclusive. Respecting the belief expressed by two of the claimants that an actual grant of the land included in the common was made at the time by Lord Selkirk to the Point holders, there is no evidence whatever in support thereof, and the circumstances altogether, connected with the claim render it even more than doubtful that such was the case. 2. As regards the right of the claimants to a patent 10 under the Act 38 Vict., cap. 52, it is clear to the undersigned, that the "undisturbed occupancy," and "actual peaceable possession," of the common, either at the time of, or previous to the transfer by the Point Holders, was not of the character contemplated by the Statute, and therefore not such as would entitle the claimants to a grant of the land. The nature of the right enjoyed in the common by the Point Holders, may be considered as somewhat analogous to that claimed in the outer two miles in the old Parishes, although it must be remembered that the latter was provided for by an Ordinance of the Council of Assiniboia, whereas there was not only no such authority to the claim to the common, but the papers show that on the Point Holders applying 20 to the Council on a certain occasion, for protection against people trespassing by cutting hay thereon, they were referred to the Governor of the Hudson's Bay Company, the natural inference of which is, that the Council, which was the highest authority in the settlement, considered the Company as possessing the title to the land. This occurred in the year 1862. The statement that the common as now claimed was set apart by Lord Selkirk, and intended by him for the exclusive use and benefit of the Point Holders, is not borne out by the facts; on the contrary, the original plan of survey, embracing the Point lots, shows the land south of lot 249, being the northerly limit of the common, and between it and Fort Garry, to have been embraced in one immense lot or tract, numbered 277, and it was not until many years after Lord Selkirk left the country, that this lot was sub-divided into smaller 20 parcels by the Hudson's Bay Company, which then represented Lord Selkirk in the country. The undersigned is of opinion that the claimants were, at the time of, and previous to the transfer, in the enjoyment of a right of common and of cutting hay over the land in question, and generally in the Province, the ascertaining and adjusting of which is provided for in the Act 33 Vict., cap. 3, and that the same should be commuted by a grant of land from the Crown."

By that Order in Council, the rights of the claimants are put in the class of rights dealt with by sub-section 5, of section 32, of the Manitoba Act, and not under any of the first three sub-sections of that section.

The first three sub-sections provide for the title to land occupied by persons being 40 confirmed to them by grants from the Crown. Sub-section 5 gives no right to any

particular land, but merely provides for commutation of rights of common and cutting hay by grants of land, not necessarily the lands, or even part of the particular lands, over which the rights existed. Grants made under that sub-section, both as to the quantity of land, and as to the particular land to be granted, are grants by the grace and favor of the Crown. It was for the Government to say, in each case, what would be the fair and equitable terms of commutation. Accordingly the Minister next dealt with the question of what would be fair and equitable terms. "The question" he says, "now to be considered is, what would be a fair and reasonable commutation of this right on the part of the Point Holders, and the conclusion arrived at was, that the applicants would be fairly, indeed liberally dealt with, were they to receive in 10
commutation of their rights, a grant of acre for acre, out of that part of the common next towards the river, which is the most valuable part of the property."

The claim of Fonseca, presented about two months after this Order in Council was passed, stood upon precisely the same footing as that of the Trustees. As to the lands claimed, which formed part of the common, he had been, as the Order in Council expressed it, "in the enjoyment of a right of common and of cutting hay over the land," and this he was entitled to have commuted on fair and equitable terms. What that commutation should be, was dealt with by a report dated 3rd February, 1879, signed by the Surveyor-General, and approved of by the Minister of the Interior. Upon the argument it was urged for the Defendants, that this was merely a departmental order, which could not define or limit the rights of Fonseca. The argument 20
used was that under the 42 Vict., cap. 31, sec. 125, D., certain powers were delegated to the Governor in Council, and he was thereby empowered to make such orders as might be deemed necessary from time to time, to carry out the provisions of The Manitoba Act, according to their true intent, or to meet any cases which might arise, and for which no provision was made in the Act, and that it was only under the Act, or some Order in Council made under the powers so conferred, that this claim of Fonseca could be dealt with. In the answers, this document is always spoken of as the Order in Council under which the patent was issued, but I suppose it was only, as now contended, an order of the Department of the Interior, and not what is known 30
as an Order in Council. The argument could, however, have any force, only in the case of a claim under the Manitoba Act, that is, a claim falling under the first three sub-sections of section 32. It can have no force in the case of such a claim as that of Fonseca.

The Order in Council of 10th May, 1877, settled that, the claim was one for commutation of rights of common and cutting hay, and the Departmental Order of 3rd February, 1879, dealt with what would be the fair and equitable terms upon which it should be commuted. It states that the Deputy Minister of Justice, to whom the claim and the evidence had been referred, "approved of the recognition of the claim," plainly, not to the full extent to which it was made, for it is added, "but gives the 40

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opinion that the extent of land to be granted is a matter for the decision of the Right Hon. The Minister of this Department." The Order in Council had said that, the claimants would be liberally dealt with, were they to receive a grant of acre for acre. The Order of 3rd February, 1879, then proceeded to say that, "in view of the relatively great value of the land in question," that is, of the land to which was claimed, "Mr. Fonseca would be most liberally treated were he to be granted such additional area to that which he actually occupied, as would make the whole 25 acres." Subsequently certain lands were designated as those to be granted to him, and the patent issued. The patent so issued embraced lands which the Crown might, or might not, have granted to him, for a grant of any lands, anywhere in the Province, would have satisfied the provisions of sub-section 5. It was only by the terms of the Order-in-Council of 10th May, 1877, that he can be said to have acquired any right to a grant of land, part of this Point Douglas Common, as the commutation of his rights of common and cutting hay. Granting then, for the sake of argument, to the fullest extent, the contention of the Defendants, that the rights of parties entitled under the sub-sections of the Manitoba Act which relate to the confirmation of the title to lands occupied on the 15th of July, 1870, are such that it is not in the power of the Government to deprive them of such land, and that patents granted in such cases are only confirmatory of a title theretofore had by the patentee, this is not the case of a patent of that kind. It is one covering land which the Crown might, or might not have granted to Fonseca. I have no doubt this Court can decree it to be void, if issued through fraud, or in error or improvidence. 10 20

Where the Court is asked to decree that a patent is void, it is not essential to show fraud on the part of the patentee, and in the present case fraud is not charged against the Defendants. The patent was set aside in *Martyn vs. Kennedy*, 4 Gr. 61, although the Court expressly exonerated the Defendant from any impropriety of conduct in connection with the grant. It is sufficient if it is shown, to have issued in error or improvidence. As Esten, V. C., said in *Martyn vs. Kennedy*, "If the mind of the Crown was indeed misinformed and deceived *eo instanti* that the grant was perfected, it is sufficient, I think, to entitle the Plaintiff to relief, although further enquiry might have dispelled the mis-apprehension which had arisen." No doubt it is not sufficient for the Crown to show only a *prima facie*, or probable case, but such evidence must be laid before the Court in order to the repeal of a patent on the ground of mistake, as will convince the mind of the Court to a reasonable certainty, that it was issued in mistake. It was so held in *Attorney-General vs. Garbutt*, 5 Gr. 181, where Esten, V. C., said, the fact of mistake must be established like other facts by such evidence as excludes all reasonable doubt upon the subject. And in *Saugeen vs. Church Society*, 6 Gr. 538, the duty of the Court was thus stated by Spragge, V. C. "If we find that the Crown made this grant in ignorance of material facts, which if known, would, as far as we can judge, have influenced the Crown to withhold the grant, we must judge it to have been made in error and mistake." At the same time, presump- 30 40



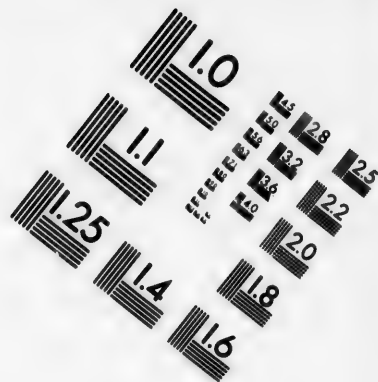
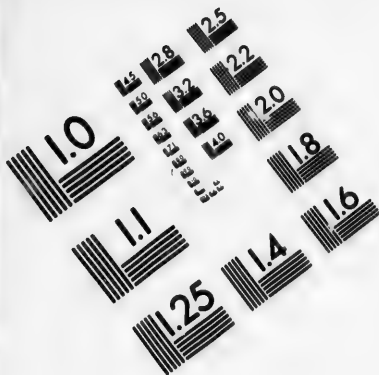
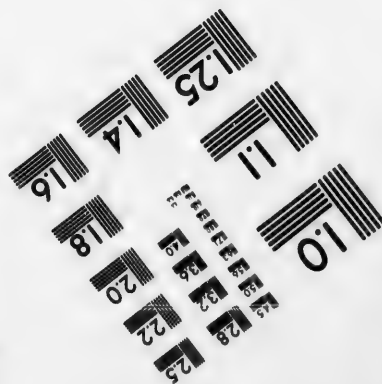
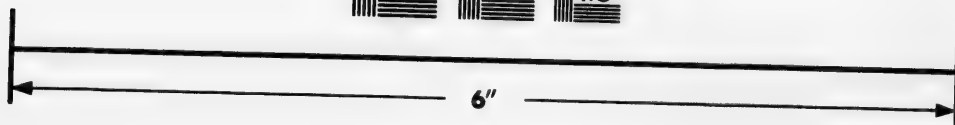
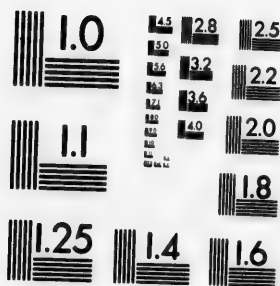


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tion against error in a Crown patent, does not seem so strong as in the case of an ordinary deed. In *Attorney-General vs. Garbutt*, Counsel for the Defendant sought to liken the case to the ordinary one of rectifying a deed between private individuals, but Esten, V. C., said, "A patent prepared *ex parte*, by passing through a variety of public offices, without any particular interest in any one to see that it is correct, stands on a different footing in this respect from a solemn deed made *inter partes*, under the personal supervision of the parties concerned, whose vigilance is stimulated by self interest." Or, as Spragge, V. C., put it, "The Crown and the subject certainly do not stand upon precisely the same footing in regard to shewing mistake in their respective deeds, in grants from the Crown and agreements and deeds between individuals, it being open to the Crown to show itself misinformed, in matters of fact, and mistaken in its law, in cases where it would not be open to a subject to avoid or reform his deed upon the same grounds." 10

A patent issued in improvidence may be set aside. In *Attorney-General v. McNulty*, 11 Gr. 281, Esten, V. C. spoke of patents issued in improvidence, as including, as he understood the expression, patents issued not through fraud nor in mistake, but hastily, incautiously, inadvisedly, to the injury of the rights of the Crown, or the rights of the subject. And in *Attorney-General v. Coutois*, 25 Gr. 346, Spragge, C., said he could see no ground in reason why an improvidence should not be relieved against alike, whether it be the result of mistake in law or of fact. 20

It is not necessary to show positively, that the relator or some person, other than the patentee, is entitled to the land, it is sufficient if there existed claims or material facts which if present to the mind of the Crown would have influenced it in dealing with the land. Where a patent is set aside, it is set aside as was said in *Fricht v. Scheck*, 10 Gr. 254, so as to enable the Crown to deal with the case with full knowledge of the facts as in its justice and wisdom it may deem right.

This being so, it seems to me the learned Chief Justice misapprehended the question with which he was called upon to deal, when he in his judgment discussed so largely the question of the rights of Logan. He says he could not hold that the patent issued by improvidence unless Logan had such a possession as would confer a right. He finds that Logan was not in possession on the 15th of July, 1870, and therefore had no rights. He also says the claim of Logan was rejected by the Government. Now, no claim was made by Logan until nearly three years after the patent now in question had been issued. The only evidence produced to show that his claim when made, was not considered a valid one, was a letter of 15th September, 1883, from John R. Hall, acting Secretary to the Minister of the Interior to the solicitors for the defendant Fonseca. The officers of the Department at Ottawa, who have been examined in this case, say, there is nothing in the records of the Department to justify the writing of such a letter. Whether Logan was or was not in possession of part of the land in question on the 15th of July, 1870, may I think on the evidence be fairly 40

considered an open question. A large number of the witnesses examined say most positively, that he was so.

The claim which had been made before the patent issued, was one made by Belch, claiming part of the land under Logan. This claim was supported by, among other evidence, a Statutory Declaration made by Fonseca as to the possession of Logan, and in it he said Logan was in possession "in the year of our Lord 1870," though he does not say he was so in the month of July. He said further in the declaration, that he knew of no claim adverse to that of Belch except one of his own, "which I release and forego to the said portions of the lot." Parts of lots C and F, now in question, were among the lands claimed by Belch. This claim was made in July, 1879, before the patent issued to Fonseca, and was sent by the Department to Winnipeg that it might be enquired into and information obtained respecting it. The papers connected with the claim were in Winnipeg when the patent issued, and were not returned to Ottawa until a considerable time after that. That claim so far as appears, has never to this day been disposed of.

It was urged that the Government had in its possession when the patent issued, abstracts of the title, and that the list of lands to be included in the patent and the fiat describing lands for patent are not produced. From an answer given by Mr. Burgess the Deputy-Minister of the Interior, that the adverse claim, called that of Logan, but plainly that of Belch, had been received prior to the fiat being sent to the Department of the Secretary of State, for the preparation of the patent, it must be presumed that the patent was granted while the Belch papers were in Ottawa. But even if abstracts of the title and the claim of Belch were in the hands of officers of the Department, that would not be an answer to a suit by the Crown to rescind a patent as issued improvidently, if adverse claims disclosed by these documents were not present to the mind of the Government or its officers, when granting the patent. That the Government had the means of ascertaining the facts, and could by investigation have ascertained them, would be no bar to such a suit. The contention in *Martyn v. Kennedy*, 4 Gr. 61, was that the Crown had the information within its reach, and must be presumed to have been acquainted with all the facts, but *Esten*, V. C., while he said it might be very just as between contending parties to a litigation to hold that each party knows what with reasonable diligence he might have known, also said that to apply the principle to such a case as he was then dealing with, would be to charge the claimant with the consequences, not of his own neglect but of the misinformation of a third party in no way interested. In *Attorney-General v. McNulty*, 5 Gr. 324, it appeared that an award which gave the claimant certain rights, was in the possession of the Crown Land Office, but the same learned Judge said there, "I am satisfied that this award was not present to the mind of the officer of the Government through whose instrumentality these patents were issued; nor do I think the presence of the submission and award in the Crown Lands Office, or the applica-

tion for their production in 1855, by Jamieson, (one of the claimants), should counter-vail this fact." In the second case of Attorney-General *v. McNulty*, 11 Gr. 281 the same thing is referred to.

Here, Fonseca had no absolute right to the particular land with which the Crown was dealing, it was land which the Crown might or might not have granted to him, and it is plain from the evidence that the Crown had no intention of granting any land to which other persons had any right, or to which claims were being made by others. From the Order in Council of 10th May, 1877, it is clear that there was no intention to grant by way of commutation for rights of common, any land for which a right to a patent might be established under the Manitoba Act or the 38 Vic. c. 52. So also, it appears from the evidence that the Government desired to protect the rights of persons who had purchased from the trustees of Point Douglas Common, or whose possession had been recognized by them.

The evidence of Col. Dennis taken in the suit of *Mercer v. Fonseca*, was read in this case, and it is very important, he having been first Surveyor-General, and afterwards Deputy-Minister of the Interior while these claims were before the Government and when the patent issued. This evidence was objected to by the defendants, but I have no doubt it can be read. The parties to the suit in which it was taken were the same as in this suit, except that the Attorney-General was then a defendant, and Eliza Mercer, the now relator, was then plaintiff suing in her own right. The allegations of fact and the case stated in the Information, are almost verbatim the same as in the bill in that suit. In every essential particular they are identical. The prayer of the bill and the prayer of the Information are exactly the same, except that the prayer of the bill has two additional clauses, one, that it may be declared that Fonseca procured the patent improperly, and the other, that he may be declared a trustee for the plaintiff. The issue raised by the bill, and that raised by the Information are exactly the same. Though the defendants now assert that this is not the case, yet, in their answers when setting up the defence that the Attorney-General is by the former suit estopped from filing this information, they both set up that the questions now raised by the Information, are those upon which evidence was given, and which were heard and determined in the former suit. Since the evidence was taken in that first suit, Col. Dennis has died. The authorities cited of *Foster v. Derby*, 1 A. & E. 791, note, and Taylor on evidence, ss. 467, 468, 469, fully warrant his evidence being now admitted and used.

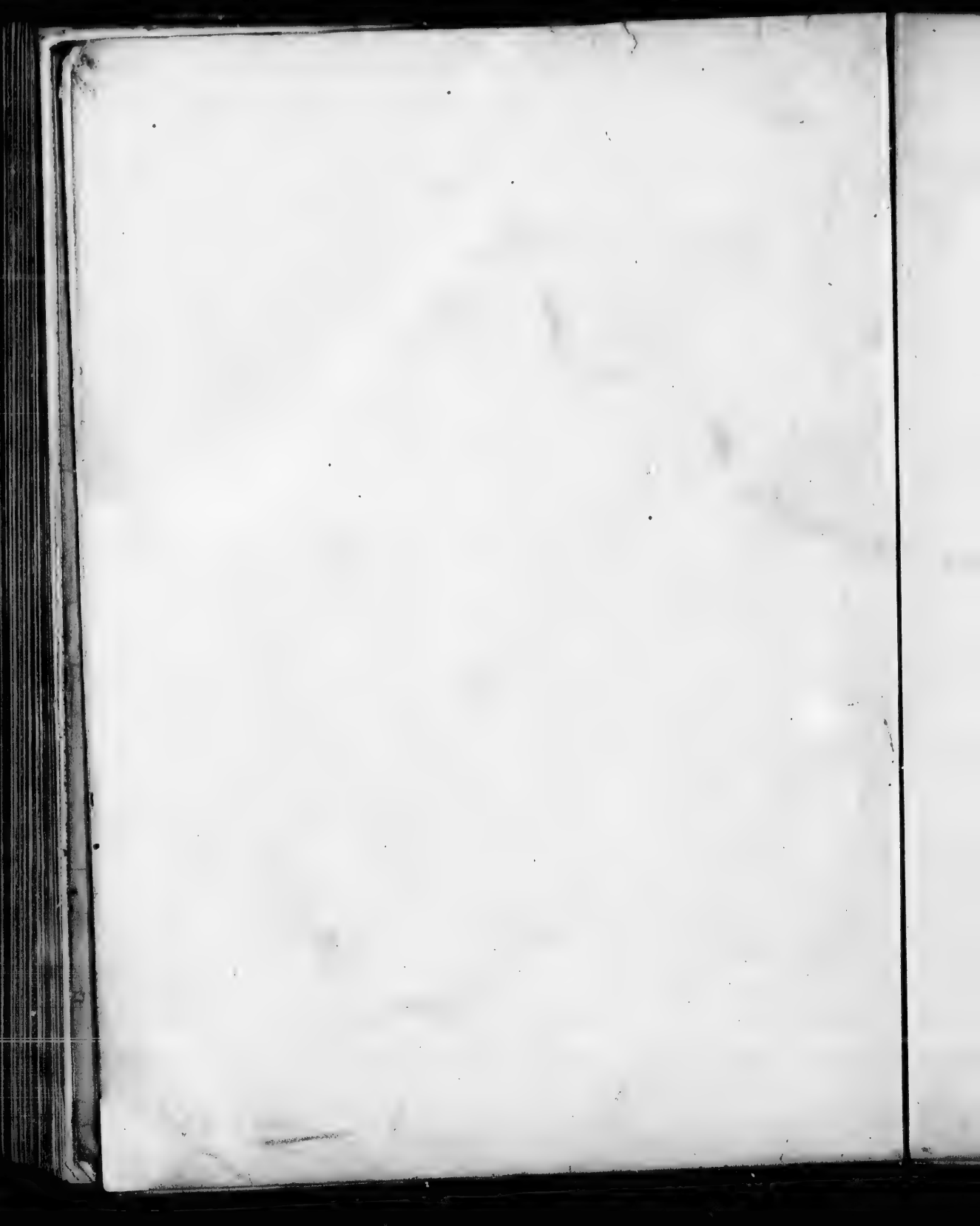
It seems to me unnecessary to go through the evidence analysing and discussing it minutely. In my judgment, no one can read it without coming to the conclusion that the patent issued improvidently, and when the officers of the Government had not present to their minds the existence of adverse claims.

From the evidence of Col. Dennis it appears that so anxious were the Government to know all about any possible claims which might be made, that an officer was

sent to Winnipeg for the purpose of ascertaining the facts which would show what lands, part of this Point Douglas Common were available for satisfying the claims of the Point holders. Col. Dennis himself visited Winnipeg, where he saw Fonseca, and where he seems to have visited and examined part of the lands at all events. After his return to Ottawa, Fonseca on the 3rd October, 1878, wrote him a letter, in which he professed to give the names "of such persons as to the best of my knowledge are the owners at present." In a schedule or statement annexed to that letter headed "List of lots disposed of out of W. G. Fonseca's claim on the Point Douglas Common," and containing a great many names, the name of William Logan is put down opposite lots C, D, & E, and the names Kew, Stobart & Co., opposite lot F. 10

A great part of the judgment of the learned Chief Justice is occupied with discussing the question of Logan's possession, as not having been possession on the 15th of July, 1870, but that seems to me not a matter of much moment. The question is not now, has Logan, or have those who claim under him, a right to this land under the Manitoba Act, as having been in possession on the 15th July, 1870. Nor is it which of the two, Fonseca or Logan, who was in possession on that day, and so entitled under the Act. As I have already said, the claim of Fonseca was one which gave a right to no particular land, and the Crown, even if this land was opened to be granted, having been occupied by no one who could claim it under the Manitoba Act by virtue of a possession on the 15th July, 1870, might still decline to make a grant of it, which would interfere with possession taken by some one at a much more recent date. 20

It seems to me that it is not necessary to find that there existed an established custom in the Department of the Interior respecting the right of squatters, such as prevailed in the Crown Land Department of Ontario, to justify the Crown in so acting. In the Statutory Declaration made by Fonseca, in support of Belch's claim, Logan is said to have been in possession of portions of C and F in 1870, though it is not said that he was so on the 15th of July. He may or may not have been so, and a large number of the witnesses examined in this suit say he was. He seems certainly to have had some rights, for in that year he built a small house and his rights, whatever they were, seem to have been recognized by the Trustees of Point Douglas common. In the Statutory Declaration made by Fonseca who was one of Trustees, he says, "The Trustees of Point Douglas common do not claim any rights in or to the said lands, but acknowledge the title of those claiming through the said Logan and Barber respectively." Upon the plan prepared for the Trustees by Duncan Sinclair, 26th December, 1870, certified as correct by Sutherland, Fonseca and Barber, on 30th September, 1872, and registered on that day, Logan's name appears on lot C. The name of Barber appears on lot D and E, that of Schultz being on the latter lots also. And on D the name of Smith has been written, but afterwards struck out. 40



From the evidence of Col. Dennis, and that of Mr. Burgess, it is clear that had all the facts been known or present to the mind of the officers of the Government, when the patent to Fonseca issued, it would not have been issued, at least not until further investigation had been made. Speaking of Fonseca's letter of 3rd October, 1878, and the statement annexed, Col. Dennis says, "No doubt I asked Mr. Fonseca for this, in order to put myself in a position to know really what Crown lands we had available there, of the portion that Mr. Fonseca claimed." He was asked, "Did you know at the time you directed that patent to issue, that you were patenting away the lots C, D and E?" A. Well, I certainly was in ignorance before authorizing the issue of the patent, that that patent was to include any lands that the Government had not the right to grant, because that was the very thing we were trying to steer of. . . . Q. If it had been brought under your notice at that time that this list of lots for patent to Fonseca included C, D and E, would you have authorized the patent to issue? A. Certainly not. Not for a moment because it would have been manifestly wrong. Q. It was not the intention of the Government to give Mr. Fonseca lands that other persons had a claim to? A. Certainly not. And lands that he admitted belonged to other people. Q. And you certainly would not have disposed of Logan's claim without investigation? A. Most certainly not. Q. So that had you known that Logan claimed this land simply, the patent would not have issued until you had disposed of Logan's claim? A. No, it would not. Q. Not knowingly? A. It would not."

The evidence of Mr. Burgess was severely criticised by counsel for the Defendants, as given with a strong bias against the Defendants, and as intended to mislead, but I cannot, after a careful perusal of it agree with such criticism.

From the evidence there can be no doubt there were adverse claims made to the land in question. It is abundantly evident that the Government did not intend to include in the patent to Fonseca, lands which the Crown had not a right to grant. Also, that the adverse claims were not present to the mind of the officers of the Government, when the patent issued and that had they been so, the patent would not have issued including these lands until, at all events, further inquiry had been made. No other conclusion can be come to than that there were claims to these lands deserving of being investigated, and requiring to be investigated, and that this patent when it issued without these claims being enquired into, was issued in error and imprevi- 30

The prayer of the information is that the patent may be set aside so far as it affects the said lands, that is lots C, D, E and F, and that it may be declared absolutely null and void and of no effect so far as regards the said lands. The only authority cited for setting aside a patent in part was *Atty.-Gen. v. McNulty*, 8 Gr. 324, in which Esten, V.C., concludes his judgment by saying the patents will be declared void either wholly or in part, according to circumstances. A mere casual expression such as that does 40

not carry much weight as an authority and would scarcely warrant the making of such a decree unless other cases can be found to support it. That a patent can be set aside in part seems to have been doubted in Ontario, for in *Martyn v. Kennedy* the prayer of the bill as appears from the report in 2 Gr. at p. 81, was that the Letters Patent might be declared void either wholly or as to the said lot 25. When judgment was given, 4 Gr. at p. 100, the expression used by Esten, V.C., was, "My opinion is, that the patent should be declared void as to lot No. 25 in the 1st con. of Darlington. In *Mutchmore v. Davis*, 14 Gr. 326, the bill sought to set aside a patent as to two lots only, of a much larger number included in it. The case was disposed of on demurrer, it being held that the plaintiff had no *locus standi*, 10 but Spragge, V.C., when giving judgment, said, "The Crown, supposing the allegations of this bill to be true, might by *scire facias* or by information, it may be assumed, have impeached Tiffany's Patent in so far as it granted the lands in question." That a patent may be void in part though good as to the rest seems to have been the opinion of Mr. Justice Story, for in *Winn v. Paterson*, 9 Pet. 679, when discussing the question he says, "At the common law, in order to make a grant void in toto, for fraud or covin, the fraud or covin must infect the whole transaction, or be so mixed up in it as not to be capable of a distinct and separate consideration." The question being important, and some doubt having been entertained as to the power of the court thus to set aside a patent in part, it has been carefully considered and search made 20 among the older authorities, to find what could have been done upon a proceeding by *scire facias* to repeal a patent. What could be done upon such a proceeding seems the test as to the powers of the court, now for Strong, J., held in *Farmer v. Livingstone*, 8 Sup. Ct. 133, the statute merely gives a new remedy for the old common law right.

In *Bassett v. Torrington*, 3 Dyer 276, letters patent, which created a corporation, gave it a mayor, aldermen and burgesses, with a grant to hold a market in each week, and two fairs annually, proceedings were taken by *scire facias* to annul the letters patent as to the markets and fairs. So in the *Prince's Case*, 8 Co. 61, the judgment was, that the letters patent there in question, as to three manors specifically named 30 should be revoked, vacated and annulled and had and held as void and invalid. It is true that Solicitor-General Finch, when arguing in *Sackville College Case*, Raym. at p. 156, pointed out that in the *Prince's Case* it did not appear that there were other lands, but *Sackville College Case* is a direct authority for the proposition that a patent may be repealed in part. Notwithstanding the argument of Finch to the contrary, Twisden, J., said at p. 177, "This grant may be repealed in part, because it consists of things of several natures; and as a patent may be good in part and naught in part, so it may be repealed for part and stand for another part." Chief Baron Hale took a different view of the case as to the propriety of repealing part of the patent then in question, but he agreed with Twisden as to the regularity of such a proceeding, for 40 he said, "A patent may be repealed in part, but this shall only be in clauses indepen-

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dent." Upon these authorities there seems no doubt that a decree may be made as prayed declaring this patent void as to lots C, D, E, and F.

I express no opinion as to who may be entitled to these lands, or whether the claims made to them can be substantiated or not. It is not my place to do so; as my judgment could in no way bind the Crown. Having found that the patent was issued in error and improvidence by reason of the existence of adverse claims and material facts, not present to the mind of the Crown when it issued, and which should have been enquired into, I simply declare it void, so as to enable the Crown to deal with the case, with full knowledge of the facts, as in its justice and wisdom it may deem right.

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The present hearing should be allowed, the decree made at the original hearing reversed, and a decree made declaring the patent void as to lots C, D, E, and F, having been issued in error and improvidence. The informant is entitled to the costs of the suit, including those of the rehearing.

Appeal allowed with costs.

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IN THE QUEEN'S BENCH,

IN EQUITY.

Saturday the seventh day of April, A. D., 1888.

The full Court.

Between HER MAJESTY'S ATTORNEY-GENERAL FOR CANADA, at and by the relation
of ELIZA MERCER,

and

Informant,

WILLIAM GOMEZ FONSECA and JOHN CHRISTIAN SCHULTZ,

Defendants. 10

THIS Case coming on the twenty-ninth and thirtieth days of November last and the first day of December last, before this Court for re-hearing of the decree or order of this Court, bearing date the fourth day of May, A. D., 1887, dismissing the Information herein out of this Court with costs, in presence of Counsel for the Informant and Defendants.

Upon opening of the matter and upon hearing read the pleadings herein and the evidence taken at the hearing of this cause and upon hearing what was alleged by Counsel aforesaid this Court was pleased to order that the matter of the said re-hearing, should stand over for judgment.

And this Cause coming on this present day for judgment.

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1. This Court doth allow the said re-hearing and doth order that the said decree of this Court, dated the fourth day of May, A. D., 1887, be set aside and reversed and the enrolment thereof vacated.

2. And this Court doth declare that the patent from the Crown, dated the fifth day of December, 1879, granting certain lands in the City of Winnipeg, in the Province of Manitoba, to the defendant William Gomez Fonseca, so far as the same relates to lots C, D, E and F, in Block fourteen (14) on the East side of Main street, of Sinclair's survey of part of lot number thirty-five (35) of the Dominion Government survey of the Parish of St. John in said Province, is void as having been issued so far as the same relates to said lots C, D, E and F, in error and improvidence and doth so order and decree the same accordingly.

3. And this Court doth further order and decree that the Defendants do pay to the

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Informant his costs of this suit including those of the said re-hearing forthwith after taxation by the Master of this Court.

Passed and entered 12th April, 1888, Book L, Folio 235.

(Signed,)

A. LEMON,
Registrar.

G. H. WALKER,
Prothonotary.

JOHN A. W. I., E. C.

IN THE QUEEN'S BENCH,
IN EQUITY.

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Between HER MAJESTY'S ATTORNEY-GENERAL FOR CANADA, at and by the relation
of ELIZA MERCER,

Informant,

and

WILLIAM GOMEZ FONSECA and JOHN C. SCHULTZ,

Defendants.

TAKE NOTICE, that the Defendants intend to appeal and do hereby appeal to the Supreme Court of Canada, to reverse the judgment or decision of the Full Court of Queen's Bench, for the Province of Manitoba, pronounced in this cause, on the seventh day of April instant, allowing the appeal of the Informant and reversing the decree of the late the Honorable Chief Justice Wallbridge.

Dated this 28th April, A. D., 1888.

CHESTER GLASS,
Solicitor for Defendant Fonseca.

MACDONALD, TUPPER & PHIPPEN,
Solicitors for Defendant Schultz.

To Messrs. PATTERSON & BAKER, *Informants Solicitors.*

IN THE COURT

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IN THE QUEEN'S BENCH,
IN EQUITY.

In Chambers, The Honorable Mr. Justice BAIN.

Tuesday the first day of May, A. D., 1888.

Between HER MAJESTY'S ATTORNEY-GENERAL FOR CANADA, at and by the relation
of ELIZA MERCER,

Informant,

and

WILLIAM G. FONSECA and JOHN C. SCHULTZ,

Defendants. 10

Upon the application of the Defendants and it appearing that they desire to
appeal to the Supreme Court of Canada, from the judgment of this Court, delivered
on the seventh day of April, A. D., 1888.

And that the sum of five hundred dollars has been paid into this Court by the
Defendants, as security that the Defendants will effectually prosecute their said
appeal and pay such costs and damages as may be awarded against them in case the
judgment appealed from be affirmed by the Supreme Court of Canada and upon
proving what was alleged by the Solicitors, for all parties.

It is ordered that the sum of five hundred dollars already paid into Court, by the
Defendants to the credit of this cause, is hereby allowed and do stand and remain in 20
Court, as security to the Informant and Relator, that the Defendants will effectually
prosecute their appeal and pay such costs and damages as may be awarded in case
the judgment appealed from be affirmed.

And it is further ordered that the costs of this application, be costs in the cause to
the successful party.

(Signed,)

JOHN F. BAIN, J.

A. LEMON,

Registrar.

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THE QUEEN'S BENCH,
IN EQUITY.

In Chambers, The Honorable Mr. Justice BAIN.

Wednesday the 2nd May, A. D., 1888.

Between HER MAJESTY'S ATTORNEY-GENERAL FOR CANADA, at and by the relation

ELIZA MERCER,

Informant,

and

WILLIAM GOMEZ FONSECA and JOHN C. SCHULTZ,

Defendants. 10

Upon hearing read the notice of motion herein dated the 1st day of May, A. D., 1888, and what was alleged by the Solicitors, for all parties.

1. It is ordered that the appeal of the Defendants in this cause to the Supreme Court of Canada, from the judgment of the Full Court of Queen's Bench for Manitoba, delivered herein on the seventh day of April, now last past be and the same is hereby allowed.

2. And it is further ordered that the Defendants be represented in the said appeal by one Solicitor or firm of Solicitors, and that the Informant's Solicitor, be notified within two weeks of the name of such Solicitor or firm and it is further ordered that the costs of this application, be costs in the cause to the successful party in said appeal.

(Signed,)

JOHN F. LAIN, J.

A. LEMON,

Registrar.